SCHOOL LAWS

OF IOWA

FROM THE CODE OF 1897, THE SUPPLEMENT TO THE CODE, 1913, AND THE SUPPLEMENTAL SUPPLEMENT, 1915.

WITH

NOTES, FORMS AND DECISIONS

FOR

USE AND GOVERNMENT OF DIRECTORS AND SCHOOL OFFICERS

EDITION OF 1915

A. M. DEYOE

SUPERINTENDENT OF PUBLIC INSTRUCTION

DES MOINES
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TRANSMIT TO SUCCESSOR

Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers and money pertaining or belonging to the office, taking a receipt therefor.

Code, Section 2770.

Note: In the past, hundreds of copies of the School Laws of Iowa, have been lost or carelessly mislaid. As a result, it has required many extra copies. School officers should bear in mind that this is not personal property and should be turned over to their successors.

Sec. 2794-a. Page 97, Line 18 should read "corporations shall not be formed."

PREFACE

The School Laws of Iowa, Section 2627-e, authorizes the Superintendent of Public Instruction, if he deems necessary, to cause to be printed every four years all school laws in force up to that time, with such notes, forms, rulings and decisions as may be of value to school officers in the discharge of their duties.

Each school corporation and each director is entitled to receive a copy for which the school officers are responsible. These copies are to be delivered to successors in office and it is, therefore, urged that special pains be taken to preserve them. The Department of Public Instruction does not furnish new copies of the school laws upon application, but school officers entitled to them must inquire of their county superintendents. School officers have no right to complain about the increase of taxes if they carelessly put this copy of the school law in some obscure place where it cannot be found at the proper time.

The explanatory notes printed herein have been prepared in accordance with recent legislation and the most recent rulings of the Supreme Court, Superintendent of Public Instruction and opinions of the Attorney General. References in most instances have been given which will indicate the source of authority and add value to their use. Those who desire additional information will find the Supreme Court decisions on file in every court house, which may be consulted upon application to the Clerk of the District Court. When more definite information is wanted the County Superintendent and the County Attorney should be consulted.

The appended decisions are those rendered by the Superintendent of Public Instruction. Only such decisions as involve the most important points in law are contained in the present volume. A careful reading of these decisions will often times give a clearer understanding of the laws.

The sections will appear in practically the same order as in the 1911 edition and the section numbers at the beginning correspond to the Code, 1897, and the Supplements. The recodification of our laws since the printing of the 1911 edition of School Laws has made it possible to give each section its proper number.

This book is submitted to the school officers of Iowa with the hope that such matter as may appear will be read thoughtfully and the knowledge gained thereby will enable the directors to perform better their duties to the public. The Department of Public Instruction recommends that the school officers shall make an honest effort to interpret the laws fairly and administer them justly. If such be done, much unnecessary trouble may be avoided. A narrow view never produces the best results.

A. M. DEYOE,
Superintendent Public Instruction.

SCHOOL LAWS OF IOWA

SUPERINTENDENT OF PUBLIC INSTRUCTION.

Sec. **2627-a. Appointment by governor—term—vacancy.** The governor shall, during the session of the thirty-sixth general assembly and every four years thereafter, nominate and with the consent of two-thirds of the members of the senate in executive session, appoint a superintendent of public instruction, whose term of office shall commence on the first secular day of July next following his appointment, and shall continue for the period of four years, and until his successor is appointed and qualified; and the term of office of the superintendent of public instruction in office at the taking effect of this act is hereby extended until the appointment and qualification of such officer under this act. Vacancies at any time occurring in said office shall be filled by appointment by the governor, but no person so appointed shall hold office beyond the end of the session of the legislature next ensuing, unless approved by the senate as above provided. [35 G. A., ch. 103, § 1.]

Sec. **2627-b. Qualifications—oath.** The superintendent of public instruction shall, at the time of his appointment, be a graduate of an accredited university or college, or of a four-year course above high school grade in an accredited normal school, and shall have had at least five years' experience as a teacher or school superintendent. He shall, before entering upon his duties, take and subscribe the constitutional oath of office, which shall be filed in the office of the secretary of state. [35 G. A., ch. 103, § 2.]

Sec. **2627-c. General supervision—duties.** The superintendent of public instruction shall have general supervision and control over the rural, graded and high schools of the state, and over such other state and public schools as are not under the control of the state board of education, or board of control of state institutions, and his office shall be known as the department of public instruction. It shall be his duty:

1. *Inspection.* To ascertain, so far as practicable, by inspection or otherwise, the conditions, needs and progress of the schools belonging to his department.

2. *Recommendations.* To suggest, through public addresses, pamphlets, bulletins, and by meetings and conferences with school officers, teachers, parents, and the public generally, such changes and improvements as he may think desirable, and may publish and distribute such views and information as he may deem important.

3. *Promotion of interest in education.* To endeavor to promote among the people of the state a proper interest in the general subject of education, including industrial and commercial education, agriculture, manual and vocational training, domestic science and continuation work.

4. *Classification.* To classify and define the various schools belonging to his department, and to formulate suitable courses of study therefor, and to publish and distribute such classifications and courses of study.

5. *Officers' and teachers' reports—forms.* To prescribe the reports, both regular and special, which shall be made by public school officers, superintendents and teachers, and other persons or officers having the custody or control of public school funds or property, and to prepare suitable forms therefor, and to furnish blanks for such reports as are to be made to him.

6. *Days for special observance.* To publish and distribute from time to time leaflets and circulars relative to such days and occasions as he may deem worthy of special observance in the public schools.

7. *Appeals—opinions.* To examine and determine all appeals made to him according to law and the rules relating thereto, and to prescribe rules of practice therefor not inconsistent with law. He shall also render written opinions upon questions submitted by school officers pertaining to their duties.

Notes: 1. **All questions answered.** It has been the custom for many years to answer all proper inquiries, from whatever source, touching the construction and application of the school laws.

2. **Letters not returned.** As all correspondence of value must be filed for preservation, it is obvious that it is impossible to comply with a request to return a letter with the reply.

8. *Reports.* He shall, on the first day of January of each year, report to the auditor of state the number of persons of school age in each county. He shall report biennially to the governor the conditions of the schools under his supervision, including the number and kind of school districts, the number of schools of each kind, the number and value of schoolhouses, the enrollment and attendance in each county for the previous year, any plans matured or measures proposed for the improvement of the public schools, and such financial and statistical information as may be of public importance; he may also include such general information relating to educational affairs and conditions within the state or elsewhere, as he may deem necessary.

9. *Plans and specifications for buildings.* He shall, when deemed necessary, cause to be prepared and published a pamphlet containing suitable plans and specifications for public school buildings, including the most approved means and methods of heating, lighting and ventilating the same, together with information and suggestions for the proper and economical construction thereof. It is hereby made the duty of the state architect to render such assistance and to perform such services in preparing such plans and specifications as may be requested by the superintendent of public instruction.

10. *Institutes.* He shall appoint county educational meetings or institutes to be held in each county once each year and not more than twice, and shall designate the time and place for holding them. The program therefor, and the instructors and lecturers therein, shall be subject to his approval.

11. *Examinations.* He shall prepare and supply questions for the examination of applicants for teachers' certificates and for the examination of pupils completing the eighth grade in the rural schools. [35 G. A., ch. 103, § 3.]

Sec. **2627-d. Office—records—clerks—supplies.** The superintendent of public instruction shall have an office in the capitol. He shall file and preserve all reports, documents and correspondence that may be of permanent value, which shall be open to inspection under reasonable conditions, by any citizen of the state. He shall keep a record of the business transacted by him, and shall turn over to his successor all records, papers, reports, documents, books and other state property pertaining to his office. He shall be furnished by the executive council with sufficient office room and clerical and stenographic help, and with all necessary books, blanks, stationery, printing, postage and office supplies, and with the reports of the supreme court of the state. [35 G. A., ch. 103, § 4.]

Sec. **2627-e. School laws—publication.** He shall every four years, if deemed necessary, cause to be printed in book form all school laws then in force, with such forms, rulings and decisions, and such notes and suggestions as may aid school officers in the proper discharge of their duties; a sufficient number of copies shall be sent to the county superintendent of each county to supply the school officers, directors, and superintendents therein. He may cause to be printed in pamphlet form after each session of the general assembly, any amendments or changes in the school laws with necessary notes and suggestions, which shall be distributed as above provided. [35 G. A., ch. 103, § 5.]

Sec. **2627-f. Reports of funds or school property—delinquency.** He may require from time to time reports under oath from all officers and persons who have any authority over, or who have any duties in connection with, public school affairs, or who have, or who have lately had, the custody or control of any public school funds or property. He shall furnish the proper blanks for such reports, and any such officer or person who unreasonably neglects or refuses to make a report required by the superintendent of public instruction shall be deemed guilty of a misdemeanor. [35 G. A., ch. 103, § 6.]

Sec. **2627-g. Deputy—chief clerk—inspectors.** He may appoint a deputy whose appointment must be approved by the governor of the state. The qualifications of the deputy shall be the same as required by section two of this act. The deputy shall qualify in like manner as his principal and, in the absence or inability of the superintendent, shall perform the duties of the office. He shall also appoint a chief clerk

and such regular inspectors of the public schools of the state, including rural, graded and high schools, as he may deem necessary, not exceeding three. [35 G. A., ch. 103, § 7.]

Sec. **2627-h. Salaries—expenses.** From and after the taking effect of this act the salary of the superintendent of public instruction shall be four thousand dollars per annum; the salary of his deputy shall be twenty-five hundred dollars per annum; the salary of the regular inspectors in the department of public instruction shall be two thousand dollars per annum each; the salary of the chief clerk shall be fifteen hundred dollars per annum, all such salaries to be paid monthly upon the warrant of the state auditor. The superintendent of public instruction and his deputy and the regular inspectors in his department shall also receive their actual necessary traveling expenses incurred in the performance of their official duties, to be allowed upon an itemized and verified account filed with and approved by the executive council and the state auditor who shall draw his warrant on the state treasurer for the amount allowed. [35 G. A., ch. 103, § 8.]

Sec. **2627-i. Repeal.** Chapter one of title thirteen of the supplement to the code, 1907, as amended, relating to the office of public instruction is hereby repealed and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed in so far as they may be inconsistent herewith. [35 G. A., ch. 103, § 9.]

BOARD OF EDUCATIONAL EXAMINERS.

Sec. **2628. Members.** The educational board of examiners shall consist of the superintendents of public instruction, president of the university, principal of the normal school, and two persons to be appointed by the governor, one of whom shall be a woman, the appointees to hold office for a term of four years and be ineligible as his or her successor, the superintendent of public instruction to be by virtue of his office president of the board. [19 G. A., ch. 167, § 1.]

Sec. **2629. Meetings—examinations.** The board shall meet for the transactions of business at such times and places as the president may direct, and shall annually hold at least two public examinations of teachers, to be conducted by a member or the secretary of the board or by such qualified person or persons as the board may select. All examinations shall be conducted in accordance with rules and regulations adopted by the board, not inconsistent with the laws of the state, and a record shall be kept of all of its proceedings. It may issue state certificates and state diplomas to such teachers as are found upon examination to possess a good moral character, thorough scholarship and knowledge of didactics, with successful experience in teaching, or with such other training and qualifications as the board may require. The examination for certificates and diplomas shall cover orthography, reading, writing, arithmetic, geography, English grammar, bookkeeping, physiology, history of the United States, algebra, botany, natural philosophy, drawing, civil government, constitution and laws of the state, and didactics; those

for diplomas, in addition to the foregoing, geometry, trigonometry, chemistry, zoology, geology, astronomy, political economy, rhetoric, English literature, general history, and such other studies as the board may require. [32 G. A., ch. 6, § 2; 29 G. A., ch. 114, § 1; 28 G. A., ch. 95, § 1; 19 G. A., ch. 167, §§ 2-4.]

Sec. **2630-b. Special certificates.** The educational board of examiners may issue a special certificate to any teacher of music, drawing, penmanship, or other special branches, or to any primary teacher, of sufficient experience, who shall pass such examination as the board may require in the branches, and methods pertaining thereto, for which the certificate is sought. Such certificates shall be designated by the name of the branch and shall not be valid for any other department or branch. The board shall keep a complete register of all persons to whom certificates or diplomas are issued. [28 G. A., ch. 96, § 2; 23 G. A., ch. 22.]

Notes: 1. **Kinds.** Under authority of this section, the board of examiners may issue special state certificates for any subject or group of subjects taught or maintained in the public schools.

2. **For whom.** The special state certificate is intended for teachers of special branches, as a recognition of professional skill, expert scholarship, and successful experience in teaching a particular subject.

3. **Scholarship.** While the candidate must possess complete and technical knowledge of the special branch for the teaching of which a certificate is desired, some general education and culture will be required, as a certificate cannot be granted on account of proficiency in one subject only.

4. **Subjects.** The holder of a special certificate will be authorized to teach the branch specified, in any public school in the state for a period of five years. Section 2631. A special primary certificate authorizes the holder to teach in primary departments. Primary departments are held to include work in first, second and third grades.

5. **Special county certificates.** See section 2734-e.

Sec. **2630-c. Validation authorized.** The state educational board of examiners is hereby empowered to validate certificates issued by state departments of education in other states, where such certificates were issued upon evidence of scholarship and experience equivalent to that required for like certificates under the laws of this state. Such validated certificate shall authorize the holder to teach in any public school in the state for five years after date of such validation. [34 G. A., ch. 130, § 1; 32 G. A., ch. 149.]

Note: **Certificates on college graduation.** Sections 2634-f to 2634-h.

Sec. **2631. How long valid—revocation—fees.** A state certificate shall authorize the holder to teach in any public school in the state for five years thereafter, and a diploma shall confer such authority for life; but any certificate or diploma may be revoked by the board for sufficient cause, or such cause as would, if known at the time, have prevented issuance thereof, provided the holder of such certificate or diploma shall have due notice, and shall be allowed to be present and make his defense. For each certificate issued the applicant shall pay two dollars, and for each diploma five dollars, which may be required before the examination is commenced. All moneys obtained from this source shall be paid into the state treasury. [32 G. A., ch. 6, § 3; 19 G. A., ch. 167, §§ 5, 6.]

Notes: 1. **Subjects for which valid.** Holders of any valid license, not a special certificate, may teach any subject prescribed in the curriculum, whether the holder was examined in such subject. Attorney-general, report 1906, page 42. (For validity of special state certificates, see section 2630-b.)

2. **No exemption.** The fact that a teacher holds a state certificate, or a state diploma, does not in any way exempt him from the same obligations imposed by the law upon other teachers. It is the duty of all teachers to attend the county normal institute and to support the county superintendent in all measures calculated to improve the schools and to advance the interests of education in the county.

3. **Registration of certificates.** All certificates and diplomas must be registered in each county in which the holder desires to teach. Section 2734-q.

Sec. **2633. Account of moneys.** The board shall keep an accurate and detailed account of all moneys received and expended, which, with a list of those receiving certificates or diplomas, shall be published by the superintendent of public instruction in his annual report. [19 G. A., ch. 167, § 9.]

Sec. **2634-a. Compensation—secretary—employes—salaries.** "Each member of the board shall receive for the time actually employed in such service, his actual necessary expenses, and those not salaried officers or employes of the state or any institution thereof shall be paid in addition, three dollars per day. The board shall have power to employ a secretary and prescribe his duties. He shall receive a salary not exceeding one hundred and twenty-five dollars per month and actual necessary expenses while engaged in the performance of his duties at places other than the capitol. The board shall have power to employ such persons as are necessary to assist in examinations and in reading answer papers and for clerical work and other necessary assistance. Persons so employed shall receive not to exceed fifty cents per hour for the time actually employed and actual traveling expenses to and from the place where their services are required. All expenditures authorized to be made under the provisions of chapter two of title thirteen of the code and of the supplement to the code [1902] and amendments thereto and under the provisions of chapter one hundred twenty-two, acts of the thirty-first general assembly, and under the provisions of this act shall be certified by the chairman of the educational board of examiners to the executive council for payment. If found correct the executive council shall cause same to be paid from any funds paid into the state treasury under the provisions of section twenty-six hundred thirty-one of the code and chapter one hundred twenty-two, acts of the thirty-first general assembly, and amendments thereto." [36 G. A., S. F. 339, § 1; 32 G. A., ch. 6, § 4; 27 G. A., ch. 73, § 1; 25 G. A., ch. 36; 19 G. A., ch. 167, § 8.]

Sec. **2634-a1. Printing.** This act shall be construed as giving legal authority to the educational board of examiners to obtain all the necessary printing for the performance of their duties, as required by law, in the same manner as the printing is provided for state officers. [32 G. A., ch. 6, § 5.]

NORMAL TRAINING IN HIGH SCHOOLS.

Sec. **2634-b1. Training of teachers for rural schools—normal courses in certain high schools.** That section two of chapter one hundred thirty-one of the acts of the thirty-fourth general assembly be and the same is hereby repealed and the following enacted in lieu thereof:

For the purpose of increasing the facilities for training teachers for the rural schools, by requiring a review of such common branches as may be deemed essential by the superintendent of public instruction and for instruction in elementary pedagogy and the art of teaching elementary agriculture and home economics, provision is hereby made for normal courses of study and training in such four-year high schools as the superintendent of public instruction may designate; provided that such high schools shall be selected and distributed with regard to their usefulness in supplying trained teachers for the rural schools of all portions of the state, and with regard to the number of teachers required for rural schools in each portion of the state. It is further provided that where a township high school or a consolidated school organized in accordance with the provisions of chapter one hundred forty-three of the acts of the thirty-fourth general assembly can meet the requirements of the superintendent of public instruction, it shall be given preference over a city high school. [35 G. A., ch. 242, § 1; 34 G. A., ch. 131, § 2.]

Notes: 1. Private and denominational schools are eligible to qualify under this law but may not receive financial aid.

2. Private and denominational schools, in order to be eligible to the provisions of this act, must maintain a course that is equivalent to that maintained in a four-year high school.

3. A class of ten enrolled in the normal course may be composed in part from those enrolled in the eleventh grade, and in part from those enrolled in the twelfth grade.

Sec. **2634-b2. Private and denominational schools.** Private and denominational schools are eligible to the provisions of this act, except as to receiving state aid. [34 G. A., ch. 131, § 3.]

Sec. **2634-b3. State aid—reports—limitations.** That section four of chapter one hundred thirty-one of the acts of the thirty-fourth general assembly be and the same is hereby repealed and the following enacted in lieu thereof:

Each high school approved under the provisions of this act shall receive state aid to the amount of seven hundred fifty dollars per annum, payable in two equal installments at the close of each semester as hereinafter provided. The superintendent of each approved training school shall at the close of each semester file such report with the superintendent of public instruction as said officer may require. Upon receipt of a satisfactory report, the superintendent of public instruction shall issue a requisition upon the auditor of state for the amount due the school corporation of said high school for said semester, whereupon the auditor of state shall draw a warrant on the state treasury payable to said school corporation for the amount of said requisition and forward

the same to the secretary of said school corporation. No high schools shall be approved as entitled to state aid unless a class of ten or more shall have been organized, maintained and instructed during the preceding semester in accordance with the provisions of this act and the regulations of the superintendent of public instruction. [35 G. A., ch. 242, § 2; 34 G. A., ch. 131, § 4.]

Sec. **2634-b4. Inspector—salary—expenses.** The appropriation provided by this act for instruction of pupils in high schools in the science and practice of rural school teaching and the teaching of elementary agriculture and home economics, may be expended in part for inspection and supervision of such instruction by the superintendent of public instruction and by such person as he may designate, and the expense of such inspection and supervision shall be paid out of said appropriation on vouchers certified by the superintendent of public instruction. In accordance with the foregoing provisions of this section, the superintendent of public instruction is authorized to appoint an inspector of normal training in high schools and private and denominational schools at a salary of not to exceed two thousand dollars per year and necessary traveling expenses while in the discharge of his duties. [34 G. A., ch. 131, § 5.]

Sec. **2634-b5. Admission—course of instruction—rules—requirements for graduation.** The superintendent of public instruction shall prescribe the conditions of admission to the normal training classes, the course of instruction, the rules and regulations under which such instruction shall be given and the requirements for graduation subject to the provisions of this act. [34 G. A., ch. 131, § 6.]

Sec. **2634-b6. Examination for graduation—failure in certain branches—fee.** That the law as the same appears in section twenty-six hundred thirty-four-b six, supplement to the code, 1913, be and the same is hereby repealed and the following enacted in lieu thereof:

"On the third Friday in January and the Wednesday and Thursday immediately preceding and on the third Friday in May and the Wednesday and Thursday immediately preceding, each year, in each high school approved under this act, an examination for graduation from the normal course shall be conducted under such rules as the state board of examiners shall prescribe, but the county superintendent of the county in which an approved high school may be located shall be designated as the conductor of said examination. Candidates for a certificate of graduation from the normal course failing in the examination in one or more subjects, may be permitted to enter the above examinations or the regular July teachers' examination under such regulations as the superintendent of public instruction shall prescribe.

Each applicant for a certificate of graduation from the normal course in a county shall pay a fee of one dollar which shall entitle him to one

examination in each subject required, provided however that applicants rewriting the examination in one or more subjects at the July teachers' examination as herein provided shall pay an additional fee of one dollar. One-half of the fees from the normal training examinations shall be paid into the state treasury on or before the first day of the succeeding month, and the remaining one-half shall be paid into the county institute fund of the county wherein the examination is held." [36 G. A., (S. F. 465, § 1.); 34 G. A., ch. 131, § 7.]

Sec. **2634-b7. Certificate—license to teach—renewal.** A certificate of graduation from the normal training course provided for in this act shall be issued by the superintendent of public instruction, and shall be a valid license to teach in any public school in the state for a term of two years, subject to registration as provided for other teachers' certificates. At the expiration of said certificate the superintendent of public instruction is authorizd to renew it for a period of three years under the same conditions that apply to the renewal of the first grade uniform county certificates. [35 G. A., ch. 242, § 4; 34 G. A., ch. 131, § 8.]

Sec. **2634-b8. Appropriation.** That section nine of chapter one hundred thirty-one of the acts of the thirty-fourth general assembly be and the same is hereby repealed and the following enacted in lieu thereof:

For the purpose of carrying out the provisions of this act, there is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of one hundred thousand dollars, available for the period ending June thirtieth, nineteen hundred fourteen, and the sum of one hundred twenty-five thousand dollars annually thereafter. [35 G. A., ch. 242, § 3; 34 G. A., ch. 131, § 9.]

Sec. **2634-e. Record of students—sworn statement.** At the close of each school year, the principal or superintendent of each accredited school shall file with the board of examiners a sworn statement, showing the name, age, post-office address, studies and attendance of each of the students in his school taking the prescribed teachers' course. [29 G. A., ch. 115, § 4.]

CERTIFICATION.

Sec. **2634-f. Graduates from accredited colleges.** That the state educational board of examiners may accept graduation from the regular and collegiate courses in the state university, state teachers college, state normal schools, and the state college of agriculture and mechanic arts, and from other institutions of higher learning in the state having regular and collegiate courses of equal rank, as evidence that a teacher possesses the scholarship and professional fitness for a state certificate. [35 G. A., ch. 226, § 1; 32 G. A., ch. 148, § 1.]

Sec. **2634-f1. Graduates of accredited colleges—other states—same recognition.** Graduates of colleges and schools located in other states than Iowa, having regular and collegiate courses of equal rank with the accredited colleges and schools of Iowa, may be given the same recogni-

tion as provided in section one of this act, provided they file with the board of educational examiners evidence of at least two years' successful experience as a teacher, principal or superintendent of schools. [35 G. A., ch. 226, § 2.]

Sec. **2634-g. State certificates granted.** That in all cases where such graduation shows the extent and quality of scholarship that is required by section twenty-six hundred twenty-nine of the supplement to the code, [1902] and when the teacher possesses a good moral character and satisfies the board of being professionally qualified, there shall be granted by the said board of examiners a state certificate valid for five years to teach in any public school in the state. [32 G. A., ch. 148, § 2.]

Sec. **2634-h. Renewal.** All certificates referred to in section twenty-six hundred twenty-nine (2629), twenty-six hundred thirty-b (2630-b), twenty-six hundred thirty-c (2630-c), twenty-six hundred thirty-four-d (2634-d), twenty-six hundred thirty-four-f (2634-f), and twenty-six hundred thirty-four-g (2634-g), of the supplement to the code, 1907, shall be renewed for life by the state board of educational examiners upon the payment of a fee of five dollars ($5.00) and proof of at least five years' successful teaching, three of which shall have been during the time the said certificate (with renewals) has been in force. [34 G. A., ch. 130, § 3; 32 G. A., ch. 148, § 3.]

Sec. **2634-h1. Conditions for renewal under certain sections—fee.** All certificates referred to in sections twenty-seven hundred thirty-four-d and twenty-seven hundred thirty-four-e of the supplement to the code, 1907, in section twenty-seven hundred thirty-four-g of the supplement to the code, 1907, as amended by chapter one hundred eighty-one of the acts of the thirty-third general assembly and by section five of this act, and in section six of this act, shall be renewed for life by the state board of educational examiners upon compliance by the holder with the following conditions:

1. The applicant shall show by testimonials from county or city superintendents or from the principals having immediate supervision of his school work and from a member of the local school board that he has had at least five years' continuous successful teaching experience (which may have been before or after the passage of this act), at least three of which shall have been immediately prior to the time validation is sought and under the grade of certificate for which such validation is desired;

2. The standing of such applicant in the several branches shown upon his certificate shall average not less than eighty-five per cent. and in no branch shall the per cent. be less than eighty per cent., provided that in case the standing is less than the per cent. required, either average or special, the holder of the certificate may, at any of the times provided in section twenty-seven hundred thirty-four-c of the supplement to the code, 1907, take an examination in any branch or branches he may desire and the per cent. then received shall be entered upon his certificate;

3. The applicant shall furnish proof of professional study during the entire five-year period such as is made necessary in the case of term renewals of certificates.

Upon the issue of a life certificate as herein contemplated, the applicant shall pay a fee of five dollars to be turned into the state treasury. [34 G. A., ch. 130, § 7.]

Sec. **2634-h2. Lapse of certificate.** All life certificates provided for in this act shall lapse provided the holder shall not teach during a period of five successive years. [34 G. A., ch. 130, § 10.]

Sec. **2634-h3. Acts in conflict repealed.** All acts and parts of acts inconsistent with the provisions hereof are hereby repealed. [34 G. A., ch. 130, § 13.]

FREE TUITION.

Sec. **2733-a1. Attendance at schools outside home district—tuition.** Any person of school age who is a resident of a school corporation which does not offer a four-year high school course and who has completed the course as approved by the department of public instruction for such corporation shall be permitted to attend any public high school or county high school in the state approved in like manner, that will receive him. Any person applying for admission to any high school under the provisions of this act shall present the officials of said high school the affidavit of his or her father, mother or guardian that such applicant is of school age and a resident of a school district of this state, specifying the district. He shall also present a certificate signed by the county superintendent showing proficiency in the common school branches, reading, orthography, arithmetic, physiology, grammar, civics of Iowa, geography, United States history, penmanship and music. The school corporation in which such student resides shall pay to the secretary of the corporation in which such student shall be permitted to enter a tuition fee equal to the average cost of tuition and the average proportion of contingent expenses in the high school department in the latter corporation during the time he so attends, not exceeding, however, a total period of four school years; such payment to be made out of the teachers' fund and the contingent fund or out of the general fund of the debtor corporation and such tuition fees as collected by the secretary shall be turned over by him with an itemized statement, to the treasurer of the school funds on or before February fifteenth and June fifteenth of each year, provided the maximum fee collected from any district for each pupil shall not exceed the sum of three and one-half dollars per month except in high schools where free textbooks are provided by the district such additional amount may be charged as will cover the cost of the textbooks furnished to such pupil. If payment is refused or neglected the board of the creditor corporation shall file with the auditor of the county of the pupil's residence a statement certified by its president

specifying the amount due for tuition and for contingent expenses respectively, and the time for which the same is claimed; and the auditor shall transmit to the county treasurer an order directing such treasurer to transfer the amount of such account from the debtor corporation to the creditor corporation, and the treasurer shall pay the same in accordance therewith. No school corporation situated in a county maintaining a county high school shall be required to pay the tuition of pupils at any high school other than such county high school, but this shall not apply to pupils who, while residing at home, attend some high school other than that of the school corporation in which they reside; and the tuition to be paid by school corporations in such county shall be three and one-half dollars per pupil per month, provided that, in counties having a county high school where a child resides at home and attends a high school outside the district of his residence other than the county high school, and the school corporation where the child resides pays the tuition for such child, and at the end of the school year it is found that less pupils have attended the county high school from the district where such child resides than was entitled to attend under the county high school apportionment, then and in that case the school corporation where such child resides shall be entitled to be reimbursed from the county high school funds for the tuition so paid, not exceeding in the aggregate an amount equal to the taxes contributed by such district to said county high school funds for the tax year preceding, fair and equitable credit being given to the county high school fund for pupils actually attending said county high school during said school year from the district where said child resides. The county superintendent shall, on being applied to for such purpose, determine in writing the amount due such corporation from the county high school fund, and furnish such corporation with a copy of such finding. Within twenty days thereafter such corporation may appeal to the district court from such finding by serving written notice on the county superintendent of the taking of such appeal. On the service of said notice the county superintendent shall file a copy of his finding in the office of the clerk of the district court and the clerk shall docket the cause without fee. The matter shall be tried on appeal as in equity and without formal pleading. The decision of the district court shall be final. The treasurer shall, upon the filing with him of any final decision, immediately transfer from the county high school funds to the credit of the corporation entitled to the same the amount directed to be transferred. [36 G. A., H. F. 587, § 2; 35 G. A., ch. 239, § 1; 35 G. A., ch. 240, § 1; 34 G. A., ch. 146, §§ 1-4.]

Notes: 1. **Constitutionality.** The statutes fixing a minimum wage for school teachers and providing a punishment for the employment of a teacher at a less rate are not violative of the constitutional provisions guaranteeing equal rights and forbidding special privileges or immunities. 165 Iowa, 697.

2. **Hiring Teachers.** The hiring of a school teacher at less than the minimum wage, and in violation of the statute prohibiting the acts and

prescribing simply a fine as punishment for its violation, is a crime triable as a misdemeanor, although the statute itself does not declare that its violation shall be a crime. 165 Iowa, 697.

3. **County High School.** A school corporation of a county maintaining a county high school, under Ch. 12, Title 13, of the Code, with a four-year course, being as a matter of law a part of the county high-school scheme, is "offering a four-year high school course" within the meaning of this section, and is not liable for the tuition of pupils residing therein while attending high school outside of their district and not in the county high school. The parents of such children are liable to the school corporation, where such children attended, for the tuition of such children. *Ind. Sch. Dist. of Stuart v. Carter*, 150 N. W., 445.

4. **Recovery of Tuition.** Where one school district paid tuition to another district in the mutual belief that the pupil for whom it was paid resided in the former district it is recoverable on the ground of mutual mistake. 162 Iowa, 686.

COUNTY SUPERINTENDENT.

Sec. **2734-a. Repeal.** There is hereby repealed sections twenty-six hundred thirty-two, twenty-seven hundred thirty-four, twenty-seven hundred thirty-five, twenty-seven hundred thirty-six, twenty-seven hundred thirty-seven of the code, and sections twenty-seven hundred thirty-four, twenty-seven hundred thirty-six, twenty-seven hundred thirty-seven of the supplement to the code, [1902] and the following enacted in lieu thereof: [31 G. A., ch. 122, § 1.]

Sec. **2734-b. Qualifications—powers and duties—deputy.** That the law as it appears in section twenty-seven hundred thirty-four-b, supplement to the code, 1907, be and the same is hereby repealed and the following enacted in lieu thereof:

The county superintendent, who may be of either sex, shall be the holder of a regular five-year state certificate or a life diploma, and shall have had at least five years' experience in teaching or superintending, but this provision as to experience shall not apply until September first, nineteen hundred eighteen, provided that any county superintendent of schools now serving shall be deemed eligible to reappointment or reelection under this act. The county superintendent shall, under the direction of the superintendent of public instruction, serve as the organ of communication between the department of public instruction and the various officers and instructors in his county, and shall transmit or deliver to them all books, pamphlets, circulars or communications designed for them. He shall visit the different schools in his county at least once during the school year and also when requested by a majority of the directors of any school corporation. He shall also, at the request of the superintendent of public instruction, visit and report upon such schools as may be designated. He may appoint a deputy, for whose acts he shall be responsible, and who may act in his stead except in visiting schools and trying appeals, the salary of such deputy to be fixed by the representatives in convention assembled. He shall, on the first Monday of each month, file with the county auditor an itemized and verified statement of his actual and necessary expenses incurred

during the previous month in the performance of his official duties within his county, and such expenses shall be paid by the county board of supervisors out of the county fund, but the total amount so paid for any one year for such purposes shall not exceed the sum of two hundred fifty dollars. [36 G. A., H. F. 6, §§ 1, 2; 35 G. A., ch. 107, § 3; 31 G. A., ch. 122, § 2; 27 G. A., ch. 85, § 1; 16 G. A., ch. 136, § 2; C. '73, §§ 1765, 1770; R. § 2069.]

Notes: 1. **Certificate in force.** To be eligible to the office of county superintendent a candidate must have held—and in force—a first or second grade state certificate, or a life diploma.

2. **Personal supervision.** Personal supervision by the county superintendent is understood to extend to all schools. Visitation by the county superintendent of city graded schools is not compulsory. During his visit to a school the superintendent may hear recitations and give instructions to pupils, but usually the regular work of the school should proceed under the immediate direction of the teacher.

3. **Visitation.** The superintendent in his visits should endeavor to aid, instruct, and inspire teachers to employ the best methods of teaching, governing and conducting their schools. He should try to secure the proper classification of pupils, the right use of the course of study and school libraries, and due care and protection of school property. He should study to awaken among parents and children a deeper interest in the public schools, so as to secure improved attendance, deportment and scholarship, and induce more frequent visits of parents and school officers. A judicious visit from the superintendent may often infuse new life into the school.

4. **Condition of buildings.** The county superintendent should carefully observe the condition of the schoolhouse and surroundings, note all defects, and at once notify the director or board of the same.

5. **Statement of traveling expense.** The itemized statement of traveling expenses must give the date the expense was incurred, for what, to whom paid, and the amount paid.

6. **Deputy—bond—compensation.** A deputy of the county superintendent may receive such a reasonable allowance for his services as the board thinks best. The deputy must take the same oath as his principal, must give a bond, and both appointment and bond must be approved by the board of supervisors before the deputy may enter upon the duties of his office. Code, section 1186.

7. **Legal adviser.** The county attorney is the legal adviser of the different county officers. He should be freely consulted on questions of law upon which the county superintendent is in doubt. Section 2740. Code, section 302.

Sec. **2734-b1. Term—vacancy.** The term of office of the county superintendent of schools shall be for three years and until his successor is elected and qualified and such term shall begin on the first secular day of September after his election; and the terms of county superintendents now in office are hereby extended until the first day of September, nineteen hundred fifteen, and until their successors are elected and qualified. Should a vacancy in such office occur, by death, removal, resignation, or otherwise, the county auditor shall at once call a special meeting for the purpose of filling such vacancy. [35 G. A., ch. 107, § 4.]

Sec. **2734-b2. Acts in conflict repealed.** All acts or parts of acts in conflict herewith are, so far as in conflict, hereby repealed. [35 G. A., ch. 107, § 5.]

Sec. **2734-c. Examinations.** On the last Friday, and Wednesday and Thursday preceding, in the months of January, June, July and October, the county superintendent shall meet and, with such assistants as may be necessary, examine all applicants for a teacher's certificate. Such examinations shall be held at the county seat, in a suitable room which shall be provided for that purpose by the board of supervisors; but the county superintendent may at his discretion cause to be held at the time of any regular examination an additional examination at some other place in the county. The questions used in such examinations shall be furnished by the educational board of examiners, who shall cause the same to be printed, and the examinations shall be conducted strictly under rules prescribed by the board.

On the last Friday of August and the Wednesday and Thursday preceding, the county superintendent of each county shall conduct an additional examination to which only such persons as file certificates of attendance during the summer immediately preceding at a summer school approved for the twelve weeks of normal training provided for in section twenty-seven hundred thirty-four-p, supplement to the code, 1913, shall be admitted.

This examination shall be under the same regulations as to preparation of questions, grading of papers, granting of certificates as the four examinations provided for in the first part of this section. [36 G. A., S. F. 563, § 1; 31 G. A., ch. 122, § 3; 19 G. A., ch. 161, § 2; 17 G. A., ch. 143; C. '73, §§ 1766, 1768, 1774; R., §§ 2066, 2068, 2073; C. '51, § 1148.]

Notes: 1. **Supplemental examination.** Where two examinations are held in a county, one will be in charge of a competent deputy appointed by the county superintendent. It is only in exceptional cases and where a large number of applicants will be accommodated that a second examination should be authorized.

2. **Assistants—compensation of.** The county superintendent should appoint such assistants as may be necessary to properly conduct the examination. The persons assisting shall file claims for their services with the board of supervisors, who shall audit and allow a reasonable compensation therefor. Section 2742.

Sec. **2734-d. First grade certificates—subjects.** The examination for the first grade certificate shall include competency in and ability to teach orthography, reading, writing, arithmetic, geography, grammar, history of the United States, didactics, elementary civics, elementary algebra, elementary economics, elementary physics, elements of vocal music, physiology and hygiene, which in each division of the subject shall include special reference to the effects of alcohol, stimulants and narcotics upon the human system. [31 G. A., ch. 122, § 4.]

Notes: 1. **Subjects for which valid.** Holders of any valid license, not a special certificate, may teach any subject prescribed in the curriculum, whether the holder was examined in such subject. Attorney-general, report 1906, page 42.

2. **Validity.** First grade certificates are valid in any county in which they are registered. Section 2734-q.

3. **Term—renewal.** A first grade certificate is issued for three years and is renewable subject to conditions named in section 2734-g.

4. **Vocational subjects.** Agriculture and a choice between Domestic Science and Manual Training is required for a first grade certificate. See section 2775-a.

Sec. **2734-e. Special certificates.** A special certificate may be issued for any subject, or any group of subjects, taught in the public schools of Iowa, upon examination in such special subject or group of subjects and per cents therein such as are required for the issue of a first grade county certificate. A special certificate shall be issued for a term of three years and shall be renewable under the same conditions as apply to the renewal of first grade certificates. It shall state the names of the subjects for which it is issued, and shall not be valid for the teaching of any other subjects. [34 G. A., ch. 130, § 4; 31 G. A., ch. 122, § 5.]

Notes: 1. **Kinds of special certificates.** The following kinds of special certificates are issued: 1, music; 2, penmanship; 3, drawing; 4, kindergarten; 5, domestic science; 6, manual training; 7, Latin; 8, German; 9, Greek; 10, French; 11, physical culture; 12, English, including grammar, rhetoric, English composition and English and American literature; 13, history and political science, including Greek, Roman, English and American history, civil government of Iowa and of the United States, and economics; 14, mathematics, including higher arithmetic, algebra, geometry and trigonometry; 15, natural science, including physiology, physical geography, geology, botany and zoology; 16, physical science, including physics, chemistry and astronomy; 17, commercial, including arithmetic, penmanship, bookkeeping and commercial law; 18, stenography.

2. **Subjects may be added.** Any candidate passing in one of these groups can at his option add another subject or group of subjects to said group without paying an additional fee, provided the examination is completed at a given date.

3. **Subjects for which valid.** The holder of a special certificate may teach only the subjects named.

4. **Validity.** Special certificates are valid in any county in the state in which they are registered. Section 2734-q.

5. **Renewal.** See section 2734-g.

6. **Special state certificates.** Section 2630-b.

Sec. **2734-f. Record of examinations.** A record shall be kept by the county superintendent of all examinations taken within his county, with the name, age and residence of each applicant, and the date of the examination. [31 G. A., ch. 122, § 6.]

Notes: 1. **Records.** The records of the examinations should be carefully kept, because from them the reports to the board of supervisors, county and state treasurers and superintendent of public instruction must be made.

2. **Details.** This record should show the names of the candidates, fees received and date, and grade of certificate issued to each.

Sec. **2734-g. First grade certificates—renewal.** Applicants who have taught successfully for at least thirty-six weeks, and whose examination entitles them to the first grade certificate, shall receive the same for a term of three years from the date thereof, and such certificate shall be renewable without examination, provided the applicants shall show by testimonials from superintendents or principals who had immediate supervision of their professional study that at least one line of professional inquiry has been successfully conducted during the life of the certificate, it being made the duty of the board to forward with

each certificate subject to renewal, outlines setting forth various lines of professional study. It is provided further that each application for renewal shall be accompanied by such proof of successful experience and professional spirit as the educational board of examiners may require. [34 G. A., ch. 130, § 5; 33 G. A., ch. 181, § 1; 31 G. A., ch. 122, § 7; 27 G. A., ch. 86, § 2; 26 G. A., ch. 39; 21 G. A., ch. 1, § 3; C. '73, §§ 1767, 1771; R., §§ 2067, 2070.]

Sec. **2734-h. Second grade certificates—renewal.** Applicants whose examination entitles them to second grade certificates only, shall receive the same for not to exceed two years with the privilege of renewal of the same without further examination under the same conditions as govern the renewal of first grade certificates. The holder of a second grade certificate, may at any of the examinations provided for in section twenty-seven hundred thirty-four-c (2734-c) of the supplement to the code, 1907, take an examination in any one or more of the additional branches, required for the issue of a first grade certificate, or he may at any such time be re-examined in any branch or branches in which he desires to raise his grade, and in each case the new per cent shall be placed on his certificate, and when he has thus successfully passed in all the branches required for the issue of a first grade certificate, such certificate shall then be issued to him, provided he has had at least thirty-six weeks' successful experience in teaching; if not, then at the conclusion of such experience. In like manner third grade certificates may be changed into those of the second or first grade, and in all cases whether the certificate be of the first, second or third grade, credit shall be given for all examinations taken under the auspices of the board, it being the intention of the law that an examination once taken shall be final unless the certificate holder desires to be re-examined in any one or more branches with a view of raising his per cent in such branches or his general average. [34 G. A., ch. 130, § 6; 33 G. A., ch. 181, § 2; 31 G. A., ch. 122, § 8.]

Notes: 1. **Subjects.** The examination for a second grade certificate includes competency in and ability to teach all the subjects enumerated in section 2734-d excepting elementary civics, elementary economics, elementary algebra and elementary physics.

2. **Subjects for which valid.** See note 1, section 2734-d.

3. **Validity.** Second grade certificates are valid in any county in which they are registered. Section 2734-q.

4. **Term—renewal.** A second grade certificate is issued for a term of two years and may be renewed indefinitely.

Sec. **2734-i. Third grade certificates.** Applicants whose examination entitles them to a third grade certificate only, shall receive the same for one year, at the end of which time upon proof of successful teaching and the payment of a fee of one dollar ($1.00), one renewal shall be granted. [34 G. A., ch. 130, § 8; 31 G. A., ch. 122, § 9.]

Notes: 1. **Subjects.** Same as note 1 to section 2734-h.

2. **Subjects for which valid.** See note 1, section 2734-d.

3. **Validity.** Third grade certificates are valid in any county in which they are registered. Section 2734-q.

4. **Term—renewal.** Third grade certificates are issued for 12 months and are eligible to one renewal only.

5. **Credits.** Applicants advancing from a third grade certificate under this section must do so while the certificate or its renewal is in force.

Sec. **2734-j. Applicants without experience.** Applicants who have had no experience in teaching, but whose examination entitles them to the first grade, shall receive a second grade certificate for two years, provided that when they have taught successfully under such certificate for not less than thirty-six weeks, they shall be entitled to receive a first grade certificate on the condition herein provided for a renewal of a certificate. [31 G. A., ch. 122, § 10.]

Sec. **2734-k. County certificates—renewal—conditions.** That section twenty-seven hundred thirty-four-k (2734-k) of the supplement to the code, 1907, is hereby repealed. [34 G. A., ch. 130, § 9; 31 G. A., ch. 122, § 11.]

Sec. **2734-l. Qualifications of applicants.** Before admitting any one to the examination, the county superintendent must be satisfied that the person seeking a certificate is of good moral character, of which fact he may require proof, and is in all respects other than in scholarship possessed of the necessary qualifications as an instructor. [31 G. A., ch. 122, § 12; 27 G. A., ch. 86, § 2; 26 G. A., ch. 39; 21 G. A., ch. 1, § 3; C. '73, §§ 1767, 1771; R., §§ 2067, 2070.]

Sec. **2734-m. Examination papers graded—certificates issued.** As soon as the examination is completed the county superintendent shall forward to the superintendent of public instruction, a list of all applicants examined, with the standings of each in didactics and oral reading, and his estimate of each applicant's personality and general fitness, other than scholarship, for the work of teaching. He shall at the same time forward to the superintendent of public instruction the answer papers written, with the exception of those in didactics. Under the supervision of the educational board of examiners, the papers shall be graded and the scholastic qualifications determined. The result of such examination of persons who pass the same shall be entered upon a certificate provided by such board, and shall be transmitted to the county superintendent of the county in which the person entitled thereto resides. [31 G. A., ch. 122, § 13.]

Notes: 1. **Report of examination.** All certificates are sent to the county superintendent, who should forward them to the persons to whom issued. At the same time, the report of the standing of those who do not receive certificates is sent to the county superintendent, who should at once notify each candidate of his standing.

2. **Checking.** Immediately upon receipt of the certificates, the county superintendent should check each one with the examination sheet. By doing so, errors may be avoided.

Sec. **2734-n. Readers—clerical help—compensation.** Immediately following each examination authorized by this act, the board of examiners shall call to their assistance a sufficient number of competent readers previously selected by the board, ten of whom shall be county superintendents. The county superintendents so chosen shall be known

as head readers and shall also constitute a review board in cases of doubt. They shall also make a list of applicants from each county, nearest the passing mark for a third grade certificate. The head readers shall receive necessary traveling expenses only. All other readers shall receive actual traveling expenses to and from the capitol and not to exceed fifty cents an hour for time actually employed in reading and marking answer papers. Such additional clerical help as may be required may be employed by the board at not to exceed thirty cents per hour for time actually employed. [31 G. A., ch. 122, § 14.]

Sec. 2734-o. **Expenditures certified and paid.** All expenditures authorized by this act shall be certified by the superintendent of public instruction to the executive council, who shall cause the auditor of the state to draw warrants therefor upon the treasurer of state, but not to exceed the fees paid into the treasury under the provisions of this act. [31 G. A., ch. 122, § 15.]

Note: Board members' salary. Section 2634-a.

Sec. 2734-p. **Qualifications of applicants—fee.** Each applicant for a certificate shall pay a fee of one dollar, one half of which shall be paid into the state treasury on or before the first day of the succeeding month, and one half shall be paid into the county institute fund. Provided, however, that applicants for teachers' certificates after July first, nineteen hundred fifteen, shall have had at least twelve weeks of normal training, and shall at the time of making such application furnish a certificate in writing from the institution where such training was received, showing such fact. It is further provided, that this act shall not apply to the regular graduates of the state university, state college of agriculture and mechanic arts, state teachers college, any accredited college of the state, or of any other college of like character outside of the state. [35 G. A., ch. 243, § 1; 31 G. A., ch. 122, § 16.]

Sec. 2734-p1. **Experience as qualification.** The provision of this act shall in no way bar any teacher who can furnish evidence of at least six months' successful teaching experience. [35 G. A., ch. 243, § 2.]

Sec. 2734-p2. **Provisional certificates.** If there should be schools without teachers and teachers cannot be secured with qualifications as provided in sections one or two of this act, then provisional certificates may be issued regardless of qualifications as provided in said sections to so many teachers as shall be required to supply such schools. [35 G. A., ch. 243, § 3.]

Notes: 1. **Fees—collection of.** A fee of $1 must be collected from everyone writing an examination either in part or in whole, from everyone applying for a provisional certificate and from everyone applying for the renewal of a certificate.

2. **Fees—depositing.** One-half of the examination fee collected must be paid into the institute fund and the other half must be forwarded to the treasurer of state, Des Moines, Iowa. These fees should be deposited on the FIRST DAY OF THE MONTH. Do not remit to the state treasurer on any other date.

Sec. **2734-q. Registration fee.** No person shall teach in any public school in this state whose certificate has not been registered with the county superintendent of the county in which such school is located. [34 G. A., ch. 130; 31 G. A., ch. 122, § 17.]

Notes: 1. **All licenses must be registered.** Every person holding either a state certificate, state diploma, a county certificate, a special certificate, or a certificate to teach in kindergartens, who desires to teach, in any of the public schools of this state must cause such certificate to be registered with the county superintendent of the county in which he desires to teach, no matter when the certificate is issued, whether before or since October 1, 1906. Opinion of attorney-general.

2. **Registration—when not necessary.** The holder of a certificate may not be required to have the same registered unless he desires to teach under its authority.

Sec. **2734-r. Third grade certificates—when not registered.** In case a sufficient number of life diplomas, state certificates, first grade certificates, special certificates and second grade certificates are held in any county to supply the schools thereof it shall not be incumbent on the county superintendent to register third grade certificates. [31 G. A., ch. 122, § 18.]

Sec. **2734-s. Special examination—provisional certificates.** When a sufficient number of licensed teachers cannot be secured to fill the schools of any county, the board of examiners may, upon the request of the county superintendent, appoint a special examination for such county to be conducted in all respects as a regular examination and the answer papers to be forwarded to the president of the board as required in regular examinations, and thereupon provisional certificates may be issued by the educational board of examiners. [31 G. A., ch. 122, § 19.]

Notes: 1. **Strict observance.** It is recommended that county superintendents observe strictly the rules under which provisional certificates are issued. Such observance will increase the efficiency of all departments of public school work.

2. **Provisional certificates—number.** It is clearly the intent of the law that provisional certificates shall be "emergency certificates," and that not more than one should be issued to any person. County superintendents should not ask for these certificates except under great necessity. Only under exceptional conditions should a provisional certificate be asked for any individual the second time.

Sec. **2734-t. Certificates—where valid—revocations.** All certificates provided for in this act shall be valid in any county within the state, when registered in such county, but a provisional certificate shall be valid, upon registration, only in the county in which it is issued and shall be issued for the same time and subject to the same extension as a third grade certificate, but no person shall be entitled to receive more than one provisional certificate, except upon the approval of the county superintendent. Any certificate or diploma issued by the board may be revoked for any cause which would have authorized or required a refusal to grant the same, or in case the holder thereof violates any of the provisions of this act. [31 G. A., ch. 122, § 20.]

Sec. **2734-u. Revocation of certificate — charges — trial — appeal.** When in the judgment of the county superintendent there is probable cause for the revocation of a certificate or diploma held by any teacher employed in his county, or when charges are preferred, supported by affidavits charging incompetency, immorality, intemperance, cruelty, or general neglect of the business of the school, the county superintendent shall within ten days transmit to such person a written statement of the charges preferred and set the time and place for the hearing of the same, at which trial the teacher shall be privileged to be present and make defense. If in the judgment of the county superintendent there is sufficient grounds for the revocation of the certificate or diploma, he shall at once issue in duplicate an order revoking the certificate or diploma, and the same shall become operative, and of full force and effect ten days after the date of its issue, one copy of the order to be mailed to the holder of the certificate and the other to be mailed to the superintendent of public instruction. Provided that the person aggrieved by such order shall have the right to appeal to the superintendent of public instruction within ten days from the date of such mailing and in case of appeal the revocation shall not be effective until the same is affirmed, after full hearing, by the superintendent of public instruction. Provided further, that in the case of life diplomas or state certificates of whatever class, the revocation shall not be effective until affirmed by the educational board of examiners after full review by said board. [31 G. A., ch. 122, § 21.]

Sec. **2734-v. List of persons holding certificates and attending normal institutes.** The county superintendent shall annually, on the first Monday of September, file with the president of the educational board of examiners a list of all persons who for the preceding year have held certificates and have attended the normal institute, with the number of days attendance of each. A similar report of summer school attendance shall be secured by the president of the board. In any subsequent examination or renewal the board may give such credit for institute or summer school attendance as it may determine, any rule adopted to apply equally to all similar cases. [31 G. A., ch. 122, § 22.]

Sec. **2738. Normal institutes—adjournment of schools—attendance —lectures—funds—reports—summer schools—fees.** That the law as it appears in section twenty-seven hundred thirty-eight, supplement to the code, 1907, as amended by chapter one hundred thirty of the acts of the thirty-fourth general assembly, be and the same is hereby repealed and the following enacted in lieu thereof:

The county superintendent shall hold annually at least one, but not more than two, county teachers' institutes at such times as the schools of the county are generally in session; and shall, with the concurrence of the superintendent of public instruction, procure such assistance as may be necessary to conduct the same.

The school board of every school district except in city independent school districts where twenty-five or more teachers are regularly em-

ployed, shall adjourn the school or schools of said district for not less than two days in each school year in order to allow teachers to attend county teachers' institutes held in the county, without loss of salary. The county superintendent shall issue a certificate of attendance to each teacher showing number of days of attendance at said institute, and any teacher failing to attend said teachers' institute two days shall forfeit his or her average daily salary for each day of non-attendance, except when excused by the county superintendent for physical disability to perform his or her duties in the school room.

In city independent districts where twenty-five or more teachers are regularly employed, the county superintendent shall co-operate with the city superintendent in arranging for educational lectures relating to the professional work of the teacher and to such matters of public education as may best meet the needs of the teachers in such districts and at such times as may be approved by the city superintendent and city board of education, in so far as the condition of the county institute fund shall permit. All arrangements concerning plans for professional teachers' meetings in said city districts shall be subject to final approval by the superintendent of public instruction. It shall be the duty of teachers in said districts to attend said lectures and the county superintendent shall issue a certificate of attendance showing number of lectures attended as provided by this act.

To defray the expenses of said teachers' institutes, in addition to the fifty dollars received annually from the state and one half of all examination fees collected in the county, one hundred fifty dollars from the general county fund shall be available for that purpose in counties having a population of thirty thousand or less, which amount shall be appropriated by the board of supervisors of such county at their January session in each year, and in counties of over thirty thousand, two hundred dollars shall be thus appropriated for such purpose.

No part of the county teachers' institute fund received from the aforesaid sources may be used for any other purpose than to pay instructors, for special supplies needed in order to properly conduct said teachers' institutes, for janitor service, and rent for building in which to conduct said institute if necessary.

On the first secular day of each month, the county superintendent shall transmit to the county treasurer all moneys received for examination fees and the state appropriation for institutes, which, together with the county appropriation, shall be designated as the county teachers' institute fund; he shall also report monthly the names of all applicants for teachers' certificates to the county auditor. All disbursements of the institute fund shall be by warrants drawn by the county auditor, who shall draw said warrants upon the written order of the county superintendent, and said written order must be accompanied by an itemized bill for services rendered or expenses incurred in connection with the institute, which bill must be signed and sworn to by the party in whose favor the order is made and must be verified by the county superintendent. All said orders and bills shall be kept on file in the

auditor's office until the final settlement of the county superintendent with the board of supervisors at the close of his term of office. No warrant shall be drawn by the auditor in excess of [the] institute fund then in the county treasury. The county superintendent shall furnish to the county board of supervisors a certified itemized account of the receipts and disbursements of all moneys collected and paid out by him for teachers' institutes and summer schools, which account they shall examine, audit and publish a summary thereof with the proceedings of the regular June meeting of the board. The county superintendent shall report to the board of supervisors on the first of January annually a summary of his official financial transactions for the previous year.

County superintendents are hereby authorized by law to conduct from four to six weeks summer school where it may be deemed advisable, for the purpose of giving teachers and prospective teachers academic instruction. A fee shall be collected from each attendant sufficient in the aggregate to meet all necessary expenses for the support of said summer school. The fee so collected shall be paid into the county institute fund and a list of the names of all attendants shall be filed with the county auditor. Warrants for the purpose of paying instructors employed in summer schools shall be drawn by the county auditor, who shall draw said warrant upon written order of the county superintendent, and said written order must be accompanied by a certified itemized bill for services rendered or expenses incurred in connection with said summer school, but no warrant shall be issued in excess of the fees received from the summer school and deposited with the county treasurer. This act shall not take effect until July first, nineteen hundred fourteen. [35 G. A., ch. 225, § 2; 34 G. A., ch. 130, § 11; 30 G. A., ch. 113; 29 G. A., ch. 123, § 1; 27 G. A., ch. 87, § 1; 17 G. A., ch. 54; 15 G. A., ch. 57; C. '73, § 1769.]

Notes: 1. **Time.** The normal institute must be held when the public schools are generally in session. Section 2773 provides that no school may be in session during a teachers' institute, except by written permission of the county superintendent.

2. **Plans.** County superintendent will determine the time and place, and suggest the names of conductor and instructors for approval.

3. **Value.** If the proper means are employed, the normal institute can be rendered invaluable to teachers. Young and inexperienced teachers should not expect to receive certificates, except of the lowest grade, without regularly attending the normal institute. The benefits to be received should secure voluntary and general attendance.

4. **Faculty.** A conductor of successful experience in institute work, able to give plain, practical instruction in methods of school organization, government and teaching, should be secured early. The other instructors should be superior teachers of recent experience.

5. **Ability should be established.** County superintendents should have sufficient evidence of the abilities of their instructors before engaging them. In all cases where strangers are employed, references should be required, and inquiries made at the state department will frequently secure the proper knowledge.

6. **Director.** The superintendent may be director, assuming the general oversight and direction of the institute. He may receive no part of the institute fund in payment for such service.

7. **Purpose.** These normal institutes are short inspirational schools, their object being to reach and correct the greatest defect found in the schools. The superintendent, in visiting schools, should seek to discover the most prominent defects and wants in the methods of instruction. The normal institute will afford effective means of reaching and correcting these faults. The great object is to instruct teachers how to teach children.

8. **Lecturers, apparatus.** In normal institutes, efficient and earnest instructors should be employed. Charts and other appliances should be amply provided. Physicians and scientists may be invited to lecture, and teachers should be exhorted to be sincere, fearless and faithful in the discharge of their duty.

9. **Reports to treasurer.** The reports and payments to the county treasurer should be made the first of each month, and at the end of the institute.

10. **Settlement with supervisors.** It is the duty of the board of supervisors to settle with the county superintendent, at the close of his term of office, as with other county officers, according to the provisions of the law.

11. **Examination fee.** The examination fee is in every case one dollar. Section 2734-p.

Sec. **2739. Reports.** The county superintendent shall annually, on the last Tuesday in August, make a report to the superintendent of public instruction, giving a full abstract of the several reports made to him by the secretaries and treasurers of school boards, stating the manner in and extent to which the requirements of the law regarding instruction in physiology and hygiene are observed, and such other matters as he may be directed by the state superintendent to include therein, or he may think important in showing the actual condition of the schools in his county. At the same time, he shall file with the county auditor a statement of the number of persons of school age in each school township, and independent district in the county. He shall also report, as provided by law, to the superintendent of the college for the blind, the name, age, residence and postoffice address of every person, resident of the county, so blind as to be unable to acquire an education in the common schools; to the superintendent of the institution for the deaf and dumb, with the same detail, all persons of school age whose faculties in respect to hearing or speaking are so deficient as to prevent them from acquiring an education in such schools; and to the institution for the feeble-minded, all persons of like age who, because of mental defects, are entitled to admission therein. [31 G. A., ch. 136, § 1; 21 G. A., ch. 1, § 2; C. '73; §§ 1772, 1775; R., § 2071.]

Notes: 1. **Blanks.** The blanks for the annual report of the county superintendent, together with instructions for making the report, are furnished by the superintendent of public instruction. The blanks for the reports to the different institutions should be furnished by the superintendents in charge of such institutions.

2. **Tests.** The superintendent should test the accuracy of the treasurers' reports by consulting the books of the county treasurer. The amount of the several funds reported received from the district tax, also the amount received from the semi-annual apportionments, must agree with the county treasurer's receipts.

3. **Errors.** All errors must be corrected. The balances reported on hand in the last report from the district treasurer must the following year be correctly accounted for and must form the first item of such report and be designated: "On hand at last report."

4. **Enumeration.** The abstract of the enumeration of children in each district should be made with special care, complete and accurate; otherwise the county will not obtain its just proportion of the income of the permanent school fund.

5. **Delayed reports.** Should the district secretaries or treasurers fail to make their reports in time, the superintendent should take prompt measures to secure them, going after them if necessary.

Sec. **2740. Enforcing laws.** The county superintendent shall see that all provisions of the school law, so far as it relates to the schools or school officers within his county, are observed and enforced, specially those relating to the fencing of schoolhouse grounds with barb wire, and the introduction and teaching of such divisions of physiology and hygiene as relate to the effects of alcohol, stimulants and narcotics upon the human system, and to this end he may require the assistance of the county attorney, who shall at his request bring any action necessary to enforce the law or recover penalties incurred. [21 G. A., ch. 1, § 2; 20 G. A., ch. 103, § 2.]

Sec. **2741. Penalty.** Should he fail to make the report herein required of him to the superintendent of public instruction or the county auditor, he shall forfeit to the school fund of his county the sum of fifty dollars, to be recovered in an action brought by the county for the use of the school fund, and in addition shall be liable for all damages occasioned thereby. [C. '73, § 1773; R., § 2072.]

Note: 1. **Additional to penalty.** In addition to the penalty provided in in this section for a failure to make the annual report, the delinquent county superintendent is required to pay a reasonable compensation to the person whom the superintendent of public instruction may appoint to make such report for him. Section 2622.

Sec. **2742. Compensation.** He shall receive a salary of twelve hundred fifty dollars a year, the expenses of necessary office stationery and postage, and those incurred in attendance upon meetings called by the superintendent of public instruction; claims therefor to be made by verified statements filed with the county auditor, who shall draw his warrant upon the county treasurer therefor; and the board of supervisors may allow him such further sum by way of compensation as may be just and proper. Provided, however, that from and after the first day of September, nineteen hundred fifteen, county superintendents shall receive the following salary, payable monthly, and the representatives of the school corporations in session may allow them such further sum by way of compensation as may be just and proper. He shall receive a salary of fifteen hundred dollars a year, the expenses of necessary office stationery and postage, and those incurred in attendance upon meetings called by the superintendent of public instruction; claims therefor to be made by verified statements filed with the county auditor, who shall draw his warrant upon the county treasurer therefor; and the board of supervisors may allow him such further sum by way of

compensation as may be just and proper. [35 G. A., ch. 107, § 2; 29 G. A., ch. 124, § 1; 19 G. A., ch. 161, § 1; C. '73, § 1776; R., § 2074.]

Notes: 1. **Superintendent determines office days.** It is the intention of the law that each county superintendent shall determine the time necessary to be employed in the duties of his office, and the division of labor to be made. Of course specific duties are required, such as making certain reports at times designated, visiting schools, and that he shall conform to the instructions from the superintendent of public instruction. But in general, he is to decide for himself, as indicated in his oath of office, what means will best advance the work in his county.

2. **Office supplies furnished.** The board of supervisors shall furnish the county superintendent with an office at the county seat, together with fuel, lights, blanks, books and stationery necessary and proper to enable him to discharge the duties of his office, but in no case shall such officer be permitted to occupy an office also occupied by a practicing attorney. Code, section 468. Report, attorney-general, 1906, page 261.

3. **Office stationery—what may be included.** Attendance and classification registers, record books for school directors and secretaries, librarian's records for rural libraries, institute records, report cards, and packages of blanks for use of school officers in calling meetings and making reports were held to be necessary office stationery. See decision of Judge J. H. Applegate in case of *Hammond & Stephens Co. vs. Dallas county*, Dallas county district court.

THE SYSTEM OF COMMON SCHOOLS.

Sec. **2743. School districts—corporate powers.** Each school district now existing shall continue a body politic as a school corporation, unless hereafter changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained. [C. '73, §§ 1713, 1716; R., §§ 2022, 2026; C. '51, § 1108.]

Notes: 1. **Boundaries.** In boundaries, school townships usually coincide with civil townships. 41 Iowa, 30.

2. **Garnishee.** Section 3936 of the code provides that a municipal or political corporation shall not be garnisheed. However, the corporation may waive exemption for this process. 25 Iowa, 315.

3. **All territory in some corporation.** The policy of our law is, that the territory once organized for school purposes must always remain within some jurisdiction, and that it may not be detached from the jurisdiction to which it belongs without at the same time becoming a separate jurisdiction or a part of another jurisdiction for school purposes. 82 Iowa, 10. Decisions, 49.

4. **General Powers.** A school corporation may possess and exercise the following powers: (a) Those granted in express terms. (b) Those necessarily implied or necessarily incident to the powers expressly granted. (c) Those absolutely essential to the declared objects and purposes of the corporation. 25 Iowa, 163; 39 Iowa, 447; 52 Iowa, 193; and 19 Iowa, 199.

5. **Validity of school organization.** Quo warranto, rather than certiorari, is the proper remedy to test the validity of the organization of a school district, and appeal to the superintendent is not the exclusive remedy. 129 Iowa, 538.

6. **Unauthorized official acts—test of.** Code, section 4313, authorizing a quo warranto proceeding to test the official and corporate rights does not preclude a school township from maintaining an action in equity in its

own name to enjoin persons, assuming without authority to act as officers of an independent district within the township, from interfering with the rights of the school township and also for an accounting, as the former proceeding is for the protection of public interest and the latter to redress private wrongs. 122 Iowa, 602.

7. **Limit of contracts.** While it is not essential that contracts made by the board be limited to the term of office of the individual members, yet it is evidently the legislative intention that contracts with teachers shall not be made for more than one year. *Burkhead v. Independent Sch. Dist.*, Iowa 107-29, 77 N. W. 491. This does not apply to City Superintendents.

8. **Action in equity.** A school township may maintain an action in equity to enjoin persons from assuming without authority to act as officers of a district within such township. *School Township v. Wiggins*, Iowa 122-602,

9. **Property.** While the district has power to hold property for any purpose for which property is authorized to be acquired by it, yet if it has by action of the board taken a conveyance of property for a new site and the action of the board in establishing such site is reversed on appeal to the county superintendent, the conveyance becomes invalid and inoperative without any action on the part of the board for rescission. *Ind. School Dist. v. McClure*, Iowa 136-122, 113 N. W. 554.

Sec. 2744. **Names.** District townships now existing shall hereafter be called school townships, subdivision of which shall be called subdistricts. School corporations shall be designated as follows: The school township of (naming civil township), in the county of (naming county), state of Iowa; or, the independent school district of (naming city, town or village, and if there are two or more districts therein, including some appropriate name or number), in the county of (naming county), state of Iowa; or, the rural independent school district of (some appropriate name or number), township of (naming township), in the county of (naming county), state of Iowa. [27 G. A., ch 91, § 1; C. '73, § 1716; R., § 2026; C. '51, § 1108.]

Notes: 1. **Subdistrict not a corporation.** A subdistrict is not a corporation, and hence can neither hold property nor perform any corporate act. Decisions, 13.

2. **Use of corporate name.** In suits, contracts and conveyances, the corporate name should be strictly observed.

3. **Change of name.** At their annual meeting, the electors of any rural independent school district may vote by ballot to change the name of the district, and the board will be guided by this expressed wish.

Sec. 2745. **Directors.** The affairs of each school corporation shall be conducted by a board of directors, the members of which in all independent school districts shall be chosen for a term of three years, and in all subdistricts of school townships for a term of one year. [26 G. A., ch. 40; 18 G. A., ch. 143; 17 G. A., ch. 113; 15 G. A., ch. 27; C. '73, § 1802; R., §§ 2099, 2100, 2106.]

Notes: 1. **Term begins.** The terms of directors of independent city, town and villages and consolidated school corporations begin on the third Monday of March and of rural independent districts and school townships on the first day of July following their election. Sections 2757, 2758.

2. **Term when filling vacancies.** A director "holding over," or elected or appointed to fill a vacancy, assumes the duties of the office within ten days [section 1275, and, if "holding over," or appointed, serves until the next regular election (section 1276), or, if elected, for the remainder of the term (section 1277)].

3. **Directors may not handle books.** Section 2834 clearly prohibits a school director from engaging, on his own account, in the sale of school books and supplies to pupils. 130 Iowa, 31.

4. **Management.** The management of school affairs is left to the discretion of the board of directors, and such discretion will not be interfered with by the courts so far as it is exercised within the scope of the powers conferred upon the board. *Kinzer v. Independent School Dist.*, Iowa 129-441, 105 N. W. 686.

5. **Control.** The board of directors being given exclusive control over the affairs of the school corporation subject to appeal to the county superintendent, an action of mandamus will lie to compel the board to comply with the orders of the superintendent in a matter to which the board has exclusive jurisdiction. *State v. Thomas*, Iowa 152-500, 132 N. W. 842.

Sec. **2745-a. Duty of boards of school directors—fence.** It shall be the duty of all boards of school directors in school districts where the schoolhouse site adjoins the cultivated or improved lands of another to build and maintain a lawful fence between said site and cultivated or improved lands. [27 G. A., ch. 88, § 1.]

Notes: 1. **Barbed wire.** Barbed wire may not be used to fence a school site, nor for any fence or other purpose within ten feet of the site. Section 2817.

2. **Lawful fence.** For the specifications of a "lawful fence" see section 2367 of the supplement to code 1913.

3. **"Tight" fence.** A partition fence shall be made tight by the party desiring it. Section 2367 of the code.

4. **Fence viewers.** The township trustees constitute the fence viewers for the purpose of determining matters in controversy. Section 2367 of the code.

5. **Additional law.** See section 2773 code.

Sec. **2745-b. Rights of owner of adjoining lands.** The owner of lands adjoining any schoolhouse site shall have the right to connect the fence on his lands with the fences around any schoolhouse site, but he shall not be liable to contribute to the maintenance of the fence around said site. [27 G. A., ch. 88, § 2.]

Note: **Barbed wire prohibited.** Barbed wire may not be used to connect the fence of an adjoining land owner with the fence around a school site. Barbed wire may not be brought nearer than ten feet of the school premises. Section 2817.

Sec. **2746. Annual meeting of corporation.** A meeting of the voters of each school corporation shall be held annually on the second Monday in March for the transaction of the business thereof. Notice in writing of the place, day and hours during which the meeting will be in session, specifying the number of directors to be elected, and the terms thereof, and such propositions as will be submitted to and be determined by the voters, shall be posted by the secretary of the board in at least five public places in said corporation, for not less than ten days next preceding the day of the meeting. The president and secretary of the board, with one of the directors shall act as judges of the election. If any judge of election is absent at the organization of the meeting the voters present shall appoint one of their number to act in his stead. The judges of election shall issue certificates to the directors elected. [19 G. A., ch. 51; 18 G. A., ch. 7, § 1; 18 G. A., ch. 63; C. '73, §§ 1717, 1719; R., §§ 2027-8, 2031, 2033; C. '51, §§ 1111, 1114-15.]

Notes: 1. **But one day.** The meeting cannot be adjourned to another day, and must be held at the time and in the manner directed by the law. Section 2746.

2. **Notice necessary.** It is mandatory upon the secretary to give ten days' notice of the annual meeting of the school corporation and of such propositions as the board or the electors by petition, as provided in section 2749, may desire to have submitted to the electors at that time. Failure to do so will invalidate any action that may be taken by the electors at such meeting. 118 Iowa, 207.

3. **Secretary must be directed.** The secretary cannot give legal notice of any proposition unless directed to do so by the board of directors. *McNees et al vs. School Township, East River*, 133 Iowa, 120; *Kinney vs. Howard*, 133 Iowa, 94; and Note 1, section 2829.

4. **Notice—kind.** Not less than ten days' notice by posting in at least five public places must be given. Section 2746. But in school corporations having five thousand or more inhabitants, notice shall be posted in each precinct and published in a newspaper. Section 2754.

5. **Registration.** In corporations of five thousand or more inhabitants, the board may provide for the registration of voters. Section 2755.

6. **Polls open.** In corporations of five thousand or more inhabitants, the polls shall open at 9 a. m. Section 2756. In all other corporations at 1 p. m.

7. **Duration.** In corporations of five thousand or more inhabitants, the polls shall remain open until 7 p. m. Section 2756. In independent city, town and village corporations of less than five thousand inhabitants they must remain open five hours and in rural and independent districts and school townships two hours. Section 2754.

8. **Official record.** The secretary shall make a complete record of the transactions of each annual or special meeting of the electors. Section 2761. In the absence of a record the action taken may be shown by parol evidence. *Kinney vs. Howard*, 133 Iowa, 94.

9. **Poll book.** A record of the names of all persons voting shall be kept by the secretary. Section 2761.

10. **By ballot.** All elections by the people shall be by ballot. Constitution of Iowa, article 2, section 6. Directors of subdistricts shall be chosen by ballot. Section 2751. Members of the board in independent districts shall be chosen by ballot, section 2754. Directors-at-large of school township is chosen in the same manner, section 2752. All propositions must be voted upon by ballot, section 2749.

11. **Form of ballot.** (a) **As to candidates.** The ballot should designate the term voted for in connection with the name of the candidate. Section 2746.

(b) **As to propositions.** The ballot must state each proposition for which notice has been given and shall provide an appropriate place in connection with each for the voter to express his wish. Section 2749. Decision, 99.

(c) **General rule.** "It is a general rule that in submitting a question on issuing bonds, a substantial compliance with the statute is sufficient." *Calahan vs. Handsaker et al.*, 133 Iowa, 622, 22; *Kinney vs. Howard*, 133 Iowa, 94.

12. **Tie vote.** A tie vote shall be publicly determined by lot before adjournment under the direction of the judges. Section 2754.

13. **Judges.** In corporations of five thousand or more, the judges for each precinct shall, where possible, consist of a member of the board and two voters of the precinct (section 2756). In all other corporations (a subdistrict is not a corporation), the judges shall consist of the president, the secretary and a member of the board. Sections 2746, 2756.

14. **Failure of judges to serve.** In case any judge is absent, the electors present at the opening of the polls shall fill the vacancy from among their number. Section 2746.

15. **Compensation of judges and registrars.** In corporations of five thousand or more, persons (not members of the board) appointed by the board to serve as judges and those appointed as registrars may receive compensation for their services. Section 2755. Attorney-general, report 1904; page 298.

16. **Members receive no compensation as judges.** Section 2780.

17. **Biennial amendment—effect of.** The provisions of the biennial amendment do not apply to school and municipal elections. 127 Iowa, 181.

18. **Qualifications—electors.** See section 2747.
School officers. See section 2748.

19. **Powers of electors.** See sections 2749, 2750, 2812-d, 2836, 2837.

20. **Special elections.** See sections 2750, 2763-a to 2763-c.

21. **Regular election.** See sections 2749, 2754, 2755, 2756.

22. **Term of director—beginning—duration.** See section 2745.

23. **When qualify.** See section 2758.

24. **Duty.** The law presumes that the officer charged with the posting of the notices has performed his duty. *Calahan v. Handsaker*, 133-622, 111 N. W. 22.

25. **Number of notices.** Where it was proposed, under section 2794, Code Supp. 1913, to consolidate the territory or parts of territory of several subdistricts—some nine tracts in all—into an independent school district, held, that the posting of five notices within the territory of the said nine tracts was sufficient. To hold that the statute required the posting of five notices in each subdistrict, or part thereof, would in effect be a judicial amendment to the statute. *Scofield v. Ferguson*, 151 N. W. 497. *Townsend v. Garrett*, 152 N. W. 565.

26. **Time of posting notices.** Notices posted March 18th, for a meeting on March 28th complies with this section. *Consolidated School Dist. v. Martin*, 152 N. W. 623.

Sec. **2747. Electors.** To have the right to vote at a school meeting a person must have the same qualifications as for voting at a general election, and must be at the time an actual resident of the corporation or subdistrict. In any election hereafter held in any school corporation for the purpose of issuing bonds for school purposes or for increasing the tax levy, the right of any citizen to vote shall not be denied or abridged on account of sex, and woman may vote at such elections the same as men, under the same restrictions and qualifications so far as applicable. [25 G. A., ch. 39.]

Notes: 1. **Qualification of electors.** To be entitled to the rights of suffrage, a person must be a male citizen of the United States, twenty-one years of age, a resident of the state six months next preceding the election, and of the county sixty days. Constitution, article 2, section 1. 69 Iowa, 368, and 75 Iowa, 220. He must be a legal resident of the corporation and subdistrict, also.

2. **Naturalization must be completed.** The declaration of intention by one who expects to become fully naturalized, does not entitle such person to vote. In some states this is a fact, but in Iowa what is called second papers must be taken out; that is, an elector must be either native born, or a naturalized citizen, must be a male, and not disfranchised in any way mentioned by the law.

3. **Citizen.** All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. Constitution United States, amendment XIV. See page 27, code 1897.

4. **Residence—voting.** The precinct in which an unmarried man rooms and sleeps, rather than the one in which he takes his meals, will determine the question of his residence with respect to the right to vote. 129 Iowa, 122.

5. **Residence—three rules.** (1) Must have residence somewhere. (2) Residence established remains until a new one is acquired. (3) Can have but one legal residence. 129 Iowa, 122.

6. **Residence—the vital question.** The vital inquiry then in determining the residence of a person always is, where is his home, the home where he lives and to which he intends to return when absent or when sick, or when his present engagement ends. 129 Iowa, 122.

7. **Women voting.** The law confers upon women the right to vote upon only the matters distinctly mentioned. They may vote upon propositions to issue bonds and levy schoolhouse taxes. *Kinney v. Howard*, 133 Iowa, 94.

8. **Separate ballot box.** A separate ballot box must be provided for the ballots cast by women, and a separate canvass made of their votes. Code, section 1131.

9. **Registration.** Registration is necessary in school corporations of five thousand or more inhabitants. Section 2755 and attorney general, report 1906, page 174.

Sec. 2748. **Officers—qualifications.** A school officer or member of the board may be of either sex, and must at the time of election or appointment be a citizen and a resident of the corporation or subdistrict, and over twenty-one years of age, and, if a man, he must be a qualified voter of the corporation or subdistrict. [16 G. A., ch. 136.]

Notes: 1. **Sex not a bar.** No person shall be deemed ineligible by reason of sex, to the office of director, secretary, treasurer, truant officer or county superintendent. Sections 2748 and 2734-b.

2. **Residence essential.** Only a resident may be elected to a school office. Section 2748. Removal from the corporation or subdistrict creates a vacancy. Section 1266, paragraph 3.

3. **De facto officers.** In the absence of any color of election or appointment a party to be treated as a de facto officer must have served under such circumstances of reputation or acquiescence as would induce the public to believe without inquiry that he was in fact such officer. 129 Iowa, 406.

4. **De facto officers—test of title.** See *Vette vs. Byington*, 109 N. W., 1073.

5. **Powers of school officers.** School officers have only such powers as are conferred by statute and when the conditions under which these are to be exercised are clearly defined they cannot be ignored. 110 Iowa, 652.

6. **De facto officers—legality of acts.** The acts of officers acting under color of election or appointment, and in good faith, are valid. 101 Iowa, 382. See also note 8, section 2771.

Sec. 2749. **Powers.** The voters assembled at the annual meeting shall have power:

1. To direct a change of text-books regularly adopted;

2. To direct the sale or make other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds of such sale;

3. To determine upon added branches that shall be taught, but instruction in all branches except foreign languages shall be in English;

4. To instruct the board that school buildings may or may not be used for meetings of public interest;

5. To direct the transfer of any surplus in the schoolhouse fund to the teachers' or contingent fund;

6. To authorize the board to obtain, at the expense of the corporation, roads for proper access to its schoolhouses;

7. To vote a schoolhouse tax, not exceeding ten mills on the dollar in any one year, for the purchase of grounds, construction of schoolhouses, the payment of debts contracted for the erection of schoolhouses, not including interest on bonds, procuring libraries for and opening roads to schoolhouses.

The board may, or, upon the written request of five voters of any rural independent district, or of ten voters of any school township, or of twenty-five voters of any city or town independent district having a population of five thousand or less, or of fifty voters of any other city or town independent district, shall, provide in the notice for the annual meeting for submitting any proposition authorized by law to the voters. All propositions shall be voted upon by ballot in substantially the following form: "Shall a change of text-books be directed?" (or other questions as the case may be); and the voter shall designate his vote by writing the word "yes" or "no" in an appropriate place on the ballot. [21 G. A., ch. 131, § 1; 19 G. A., ch. 51; 18 G. A., ch. 63; C. '73, §§ 1717, 1807; R., §§ 2027-8, 2033; C. '51, §§ 1114, 1115.]

Notes: 1. **Additional powers.** (a) To vote on a proposition for county uniformity of text-books. Section 2831.

(b) To authorize the board to purchase text-books to be loaned to the pupils. Section 2836.

(c) To authorize the board to issue school building bonds. Section 2812-d.

2. **Limitation of powers.** The voters have only such powers as are conferred by the statute, either expressly or by reasonable implication. Section 2743. 110 Iowa, 652.

3. **Disposition of school property.** The voters of any district when assembled at their annual meeting may direct that a schoolhouse or the schoolhouse grounds not needed for public school purposes may be sold, rented, leased, or the use thereof granted, for any purpose that will not interfere with the subsequent use or value of such schoolhouse property for public school purposes. Section 2749.

4. **By ballot.** Special attention is called to the fact that under the present law all propositions before the electors at their annual meeting must be voted upon by ballot. See last paragraph, section 2749.

5. **Sale must be directed.** Schoolhouses cannot be sold without previous direction of the voters, but their action in voting a tax for the erection of a new schoolhouse on the old site gives the board authority to remove the old house. Paragraph 2, section 2749. See also 110 Iowa, 652.

6. **Loaning funds.** The voters have no authority to instruct the board to loan money belonging to the district, nor to order money invested in government bonds. See note 2, ante.

7. **Vested right.** The general statement is that when an amount has been voted for a specific purpose, the parties directly interested thereby acquire a vested right in such money appropriated, of which they may not be deprived, even by the voters. 50 Iowa, 648; 100 Iowa, 317.

8. **Transfer.** The only change of money from one fund to another possible under the law is the transfer of surplus schoolhouse funds to either of the other funds. Paragraph 5, section 2749.

9. **Added branches.** If the voters direct that any additional branches shall be taught in one or all of the schools, their action is mandatory, and the board is bound to endeavor in good faith to fulfill such wish. 44 Iowa, 564.

10. **Course of study.** The voters may not limit nor restrict the board to the adoption of a course of study including only such branches as the

voters may name. Nor may the voters direct that a particular branch, or branches, shall not be taught. It is the province of the board to decide what branches besides those named by the voters shall be included in the course of study and taught in the schools. Section 2772.

11. **Voters may not prohibit.** The voters have no power to prohibit any branch being taught, if introduced by the board, neither has the board power to prevent the teaching of any study which the voters have directed shall be taught. 44 Iowa, 564. Section 2772.

12. **Schoolhouse taxes.** All schoolhouse taxes must be voted by the voters of the corporation, or the subdistrict; this power cannot be delegated to the board. For exceptions see section 2806, note 3; sections 2811 and 2813.

13. **Sum necessary.** The specific sum of money deemed necessary, and not a certain number of mills on the dollar, should be voted, except when a district lies in two counties. The per centum necessary to raise this sum is determined by the board of supervisors. Section 2806.

14. **Taxes to be voted by electors.** The power to vote schoolhouse taxes or school building bonds for the purchase of sites, erection and repair of schoolhouses, and the payment of debts contracted therefor belongs exclusively to the voters. The sums necessary for the teachers' and contingent funds are determined by the board. Amounts necessary to pay on judgments and bonds may be voted by the electors or estimated by the board. Sections 2749, 2806 and note 3, 2813.

15. **Compelling board to act.** Failing to carry out instructions from this meeting, the board may be compelled by mandamus to show reason why the expressed wish of the voters has not been complied with. Section 2778; decisions, 20; 50 Iowa, 648.

16. **Suggestive action.** A vote upon matters which by the law are to be determined by the board, is not binding upon the board, but is only suggestive. In such matters, the board will still be left free to exercise the discretion vested in it by the law. Note 4, section 2743.

17. **Notice necessary.** In order that action may be taken at the annual meeting of the school corporation, it is essential that notice shall be given, as provided in section 2746, that such a matter will be presented at the meeting. When assembled, the voters have power to act only upon such of the powers conferred as have been incorporated in the notice for the meeting. Section 2746; 118 Iowa, 207; decision, 99.

18. **Subdistricts claim.** A subdistrict has no legal claim upon schoolhouse property, although in equity a tax voted to build in a certain subdistrict must be expended as voted, and when a schoolhouse has been built or repaired from schoolhouse funds raised upon that subdistrict alone, even the voters should recognize the vested right of the subdistrict to retain such property and to enjoy its use. 50 Iowa, 648.

19. **Removal from subdistrict.** If it is desired to move the schoolhouse out of the subdistrict the voters of the school township must first so order at the annual meeting . Decision, 15; paragraph 2, section 2749.

20. **Jurisdiction of court.** It is the exclusive province of the courts to determine questions with relation to any vote at a school meeting, or with relation to the choice of members of the board or of officers of the board. Notes 10 to 13 inclusive, to section 2758. 129 Iowa, 441.

21. **Roads.** See sections 2815, 2750, 2773.

22. **Text-books—Change of.** Sections 2749, 2829.

23. **Original indebtedness.** Original indebtedness may not be created except by vote of the electors. Section 2823.

24. **Limit of indebtedness.** See section 1306-b, and 2820-d2.

25. **Each preliminary step not necessary.** It is not necessary that the ballot contain a recital of every preliminary step necessary to render the election valid. *Calahan v. Handsaker*, 133 Iowa 622, 111 N. W. 22.

26. **Statutory compliance necessary.** No specific form of ballot is prescribed; all that is necessary is that the ballot fairly and intelligently present the question that is to be voted upon. A substantial compliance with the

statute is sufficient. So held where the question was as to the validity of bonds issued on a vote of the electors. *Ibid.*

27. **Electors may rescind tax.** The electors of a district township having the power to vote a tax may rescind such vote unless, by so doing, they interfere with vested rights; and held that where the board and its officers had failed to certify a schoolhouse tax for collection, and the persons desiring to secure the schoolhouse for which the tax was levied had no interest except the right to bring action to compel the certification of the tax, they had no such vested interest as to authorize them to object to the rescission of the tax. *Hibbs v. Board of Directors*, 110 Iowa 306, 81 N. W. 584.

28. **Tax enforceable against new territory.** A schoolhouse tax voted by the electors at their regular meeting is enforceable against property which is brought into the school district by extension of its limits prior to the levy of such tax, although at the time the tax was voted the owner was not a resident and could not participate in the election, and notwithstanding the fact that the tax had been certified to the county board for levy before such annexation took place. *Grout v. Illingworth*, 131 Iowa 281, 108 N. W. 528.

29. **Submission discretionary.** In the absence of a written request for the submission at the annual meeting of any proposition authorized by law, it is discretionary with the board to provide in the notice of the meeting for such proposition to be submitted. *Kirchner v. Board of Directors*, 141 Iowa 43, 118 N. W. 51.

30. **Vote excess funds.** Electors may vote a fund for the erection of a schoolhouse in excess of the amount that can be realized by the statutory levy and in such case the board of supervisors should make the legal levy notwithstanding the excessive amount voted by the electors. The vote of the electors in such case is not void although larger in amount than can be legally levied in any one year. *Ibid.*

31. **Electors may direct sale.** The taxpayers have no such vested right in a schoolhouse built in accordance with the vote of the electors as to justify a court of equity in enjoining the sale thereof as ordered at an annual meeting or a special meeting duly called. *Barclay v. School Township*, 157 Iowa 181, 138 N. W. 395.

Sec. 2750. **Special meeting.** The board of directors may call a special meeting of the voters of any school corporation by giving notice in the same manner as for the annual meeting, which shall have the powers given to a regular meeting with reference to the sale of school property and the application to be made of the proceeds, and to vote a schoolhouse tax for the purchase of a site and the construction of a necessary schoolhouse, and for obtaining roads thereto. [28 G. A., ch. 104, § 1; 24 G. A., ch. 21; 18 G. A., ch. 84.]

Notes: 1. **Submission optional.** The submission of a proposition to a special meeting, even though requested by the electors, is discretionary with the board and its action will not be interfered with by mandamus. *Kirchner v. Board of Directors*, 141 Iowa 43, 118 N. W. 51.

2. **Special notice.** The provision as to notice of special meetings of the board contemplates some form of specific personal notice on each member. It does not authorize the mailing of such notice. Personal delivery of some form of notice is required. On failure to give proper notice to a member, a special meeting of the board is not lawfully called and it cannot lawfully act. *Barclay v. School Township*, 157 Iowa 181, 138 N. W. 395.

3. **Additional powers.** To authorize the board of directors to issue school building bonds. Section 2812-d.

4. **Additional indebtedness.** Bonds may be voted under section 2820-a to 2820-e only at a special meeting called for that purpose.

5. **Number of special meetings.** The law does not limit the number of special meetings that may be called. Section 2750.

Sec. 2751. **Subdistrict meeting.** The meeting of the voters of each subdistrict of a school township shall be held annually on the first Monday in March, and shall not organize earlier than nine o'clock a. m., nor adjourn before twelve o'clock m. Notice in writing of the time and place of such meeting and the amount of schoolhouse tax to be voted shall be given by its director, or if there is none by the school township secretary, by posting in three public places in the subdistrict for five days next preceding the same. The voters shall select a chairman and secretary of the meeting who shall act as judges of election, and shall also elect a director for the subdistrict by ballot. The vote shall be canvassed by the judges of election, and the person receiving the highest vote shall be declared elected. [22 G. A., ch. 51; 18 G. A., ch. 7, § 1; C. '73, §§ 1718-19, 1789; R., §§ 2030-1; C. '51, § 1111.]

Notes: 1. **Purpose of the law.** The object is to prevent a few designing persons from meeting at an unusual hour, dispatching the business with unseemly haste, and adjourning before many of the electors arrive. The meeting should be conducted with entire fairness, and an opportunity given for an expression of the real sentiment of the subdistrict.

2. **Notice.** At least five days' notice shall be given by posting in at least three places in the district. Section 2751. If a special schoolhouse tax is to be voted on the property of the subdistrict, ten days' notice must be given. Section 2753. In case there is no director the above notice must be given by the secretary of the school township. The notice should designate the hour of meeting, which cannot be earlier than 9 o'clock a. m., and the hour of closing, which shall not be later than 12 m. Section 2751.

3. **Duration of meeting.** While this section does not in terms specify the length of time during which a subdistrict meeting should remain in session, section 2754 provides that in rural independent districts the polls must remain open not less than two hours. For obvious reasons a subdistrict meeting should continue in session at least the same length of time. The voters of the subdistrict should be given a reasonable opportunity to participate in the meeting. 37 Iowa, 131; 39 Iowa, 380.

4. **In case of controversy.** If subdistrict boundaries are in controversy by way of appeal, the election for directors should be made on the basis of the status of the subdistricts on the day of election.

5. **Organization.** A chairman and secretary shall be chosen from among the voters present. Section 2751.

6. **Judges not qualify.** The chairman and the secretary are not required to qualify.

7. **Judges' vote.** A judge of election is entitled to his vote the same as any other elector.

8. **Who may not vote.** No minor, non-resident, nor alien can take part in a meeting of voters. Section 2747.

9. **No caucus.** If the voters desire to hold a caucus, it should be done before the subdistrict meeting is called to order. After organization but one lawful ballot can be taken, therefore no informal ballot can be taken.

10. **Tie vote.** A tie vote for any elective school office shall be publicly determined by lot forthwith, under the direction of the judges. Section 2754. This applies to all school elections. If more than two persons have each an equal number of votes, the same rule will apply. No second ballot may be taken. Such cases should not be taken to the school board, but should be settled at the meeting of electors before adjournment.

11. **One ballot.** Only one ballot may be taken for the election of director, and the person receiving the greatest number of votes is elected, even though he has not received a majority of all the votes cast. Section 2751.

12. **Eligibility.** A member or officer of the board must have the qualifications of an elector, if a male, but no person is ineligible to any school office by reason of sex. Section 2748.

13. **Special schoolhouse tax.** The subdistricts may vote an additional tax for schoolhouse purposes and the secretary of the subdistrict meeting shall certify the same to the secretary of the school township who shall certify it to the board of supervisors. Section 2753.

14. **A vote of the subdistrict not notice.** A vote of the electors at a subdistrict meeting is not legal notice that such proposition will come before the electors at the school township meeting as contemplated in sections 2746 and 2749.

15. **Tax provision legal.** The provision with reference to additional taxes voted by electors of subdistricts for schoolhouse purposes, held, to give implied authority to vote such taxes, although the power was not elsewhere expressly conferred. 69 Iowa, 533.

16. **Term of director of subdistrict—beginning—duration.** See sections 2745 and 2757.

17. **When to qualify.** See section 2758.

18. **Special subdistrict meeting.** See section 2753.

19. **Funds—classification of.** See section 2768.

20. **Electors—qualifications of.** See section 2747.

21. **Subdistrict lines—voting—taxes.** Subdistrict lines determine who may vote at a subdistrict meeting and also fixes the limit of taxation, when a schoolhouse tax is voted upon the subdistrict. Sections 2747, 2753.

Sec. 2752. **Number of directors.** The board of directors of a school township shall be composed of one director from each subdistrict. But when there is an even number of subdistricts another director shall be elected at large by all the voters of the school township. When the school township is not divided into subdistricts, a board of three directors shall be elected at large, on the second Monday in March, by all the voters of the school township. [27 G. A., ch. 92, § 1; 15 G. A., ch. 27; C. '73, §§ 1720-1; R., §§ 2031, 2035, 2075-6; C. '51, §§ 1112, 1721.]

Notes: 1. **Number of members.** The board of a school township cannot consist of less than three members. When there is an even number of subdistricts one director at large must be elected on the second Monday of March by all the voters of the school township.

2. **Power of director-at-large.** The director-at-large has the right to vote upon all questions before the board the same as any other member.

3. **Independent district townships.** In school townships that organized as independent district townships under section 1814, code of 1873, the board consists of five members. See section 1814, code of 1873, 15 G. A., ch. 27, sec. 2754.

4. **Other corporations—number of directors.** See section 2754.

Sec. 2753. **Special schoolhouse tax.** At the annual subdistrict meeting, or at a special meeting called for that purpose, the voters may vote to raise a greater amount of schoolhouse tax than that voted by the voters of the school township, ten days' previous notice having been given, but the amount so voted, including the amount voted by the school township, shall not exceed in the aggregate the sum of fifteen mills on the dollar. The sum thus voted shall be certified forthwith by the secretary of said subdistrict meeting to the secretary of the school township, and shall be levied by the board of supervisors only on the property within the subdistrict. [C. '73, § 1778; R., §§ 2033-4, 2037, 2088.]

Notes: 1. **Tax certified.** The vote should be certified to the secretary of the school township forthwith.

2. **Vote of subdistrict meeting not notice.** A vote of the subdistrict meeting is not legal notice that such proposition will come before the electors at the school township meeting as contemplated in sections 2746 and 2749. 118 Iowa, 207.

3. **Levy of subdistrict tax.** Taxes voted at a subdistrict meeting shall be levied only on the property in the subdistrict. Section 2573. Such action is not notice that the proposition will be submitted at the regular meeting. Sections 2746 and 2749; see note 14, section 2751.

4. **Other meetings.** Regular subdistrict meeting, section 2751; regular meeting of corporation, sections 2746, 2749, 2754, 2755, 2756; special meeting of corporation, section 2750.

Sec. 2754. **Elections in independent districts—tie vote—nomination—ballot.** At the annual meeting in all independent districts members of the board shall be chosen by ballot. In any district including all or part of a city of the first class, or a city under special charter, the board shall consist of seven members, three of whom shall be chosen on the second Monday in March, 1898, two on the second Monday in March, 1899, and two on the second Monday in March, 1900. In all other independent city, town or village districts, and in all rural independent districts the board shall consist of three members, one of whom shall consist of five members, one of whom shall be chosen on the second Monday in March, 1898, two on the second Monday in March, 1899, and two on the second Monday in March, 1900. In all independent city, town, or village districts where the board now consists of three members such board shall hereafter consist of five members, three of whom shall be elected on the second Monday in March, 1898, one for one year, one for two years, and one for three years. In all other rural independent districts the board shall consist of three members, one of whom shall be chosen on the second Monday in March, 1898, and one each year thereafter. In districts composed in whole or in part of cities or towns, a treasurer shall be chosen in like manner, whose term shall begin on the first day of July, unless that date falls on Sunday, in which case, on the day following, and continue for two years, or until his successor is elected and qualified. The term of office of the incumbent treasurer in said districts shall expire on the third Monday in March, 1898. In such districts the polls must remain open not less than five hours and in rural independent districts and school townships not less than two hours. In each case the polls shall open at one o'clock p. m., except as provided in section twenty-seven hundred and fifty-six of this chapter. A tie vote for any elective school office shall be publicly determined by lot forthwith, under the directions of the judges.

The names of all persons nominated as candidates for office in all independent city or town districts shall be filed with the secretary of the school board not later than seven days previous to the day on which the annual school election is to be held, each candidate to be nominated by a petition signed by not less than ten qualified electors of the district. The secretary of the school board shall cause to be printed, ballots upon which shall appear in alphabetical order the names of all candidates

for each office, filed as herein provided, and a blank line for each such officer to be elected, and there shall be at the left of each name and each blank line a square and there shall also be a direction to the voter as to the number of candidates to be voted for at said school election. Ballots shall be printed upon plain substantial paper of uniform quality and shall have no party designation or mark whatever. The secretary of the board shall cause to be delivered at the several polling places a sufficient number of ballots. In all other respects the said school election in independent city or town districts shall be conducted under the general election laws of the state of Iowa, so far as same may be applicable. [35 G. A., ch. 245, § 1; 31 G. A., ch. 136, § 2; 27 G. A., ch. 93, § 1; 27 G. A., ch. 91, § 2; 22 G. A., ch. 51; 18 G. A., ch. 7, § 2; C. '73, §§ 1789, 1808.]

Notes: 1. **No change of date.** Any election by the people must be held on the day designated, and can neither be postponed nor adjourned to another day, and the officers voted for by the people must be elected by a single ballot.

2. **Caucus—informal ballot.** The practice of taking an informal ballot for the purpose of placing persons in nomination would render the election illegal. Such nomination should be made outside the meeting, or at least before the meeting is organized.

3. **Form of ballot.** In all cases, the ballot should state the term voted for, in connection with the name of the person. It should state all propositions to be voted upon. Sections 2746 and 2749.

4. **Vacancies.** All vacancies should also be filled by election, and the ballot should designate the vacancy to be filled, and the person so elected holds for the remainder of the unexpired term. Sections 2758 and 2771.

5. **Membership of boards.** All districts comprising cities of the first class and those under special charter have seven directors. In all other city, town or village districts, and in the rural independent districts which formerly had six members the board now consists of five members. In all other rural independent districts the board consists of three members. Section 2754. For school townships, see section 2752.

6. **Treasurer.** In districts composed in whole or in part of cities or towns, the treasurer must be elected by the people for the term of two years. This does not apply to village districts. In these and in all other districts, except those specified above, this officer is elected by the board. Sections 2754 and 2757.

7. **Tie vote.** A tie vote for any elective school office must be publicly determined by lot forthwith, under the direction of the judges. This applies to all school elections. If more than two persons have each an equal number of votes, the same rule will apply. No second ballot may be taken. Section 2754.

8. **Polls open.** In corporations of five thousand or more, the polls shall open at nine o'clock a. m. (section 2756), and in all other corporations at one p. m. Sections 2754 and 2756.

9. **Polls close.** In corporations of five thousand or more, the polls shall not close earlier than seven o'clock p. m. (section 2756); in other independent city, town or village districts they shall remain open at least five hours; and in rural independent districts and school townships, two hours. Sections 2754 and 2756.

10. **Judges.** In corporations of five thousand or more, the judges for each precinct shall consist of a member of the board and two voters of the precinct (section 2756); in all other corporations the judges shall consist of the president, the secretary and one member of the board. In case any judge is absent the electors present at the time the polls open shall fill the vacancy. Sections 2754 and 2756.

11. **Qualifications of electors.** See section 2747.
12. **Regular meeting—notice, etc.** See section 2746.
13. **Powers of electors.** See sections 2749 and 2750.
14. **Special election.** See section 2750.
15. **Booths.** The law requires the use of voting booths at school elections in cities and towns. Attorney General.
16. **Official ballot.** The official ballot described in this section is the only one that may be lawfully used in the elections for which it was provided. Attorney General.

Sec. 2755. **Election precincts—register of voters—notice.** Each school corporation having five thousand or more inhabitants may be divided into such number of precincts as the board of directors shall determine, in each of which a poll shall be held at a convenient place, fixed by the board of directors, for the reception of the ballots of voters residing in such precinct. A separate register of the voters of each precinct shall be prepared by the board from the register of the electors of any city included within such school corporation, and for that purpose a copy of such register of electors shall be furnished by the clerk of the city to the board of directors. Before each annual meeting these registers shall be revised and corrected by comparison with the last register of elections of such cities, and shall have the same force and effect at school meetings held under this section, in respect to the reception of votes thereat, as the register of election has by law at general elections. The board of directors of such school corporation, on or before the last Monday preceding such election shall appoint two suitable persons to be registrars in each of the election precincts of such school corporation for the registration of voters therein, who shall have the same qualifications as registrars appointed for general elections and shall qualify in the same manner, and receive the same compensation to be paid by the school corporation. The registrars shall meet on the day of election at the voting place in the precinct in which they have been appointed and shall hold continuous session from nine o'clock in the forenoon until seven o'clock in the afternoon. Any person claiming to be a voter, and who is not already registered in the proper precinct, may appear before them in the election precinct where he claims he is entitled to vote and make and subscribe under oath a statement in the registry book, which oath and statement shall be of the same general character as that prescribed by section one thousand and seventy-seven (1077) of the code, and shall thereupon be granted a certificate of registration. Nothing in this section shall be construed to prohibit women from voting at all elections at which they are entitled to vote. The secretary must post a notice of the meeting in a public place in each precinct at least ten days before the meeting, and by publication once each week for two consecutive weeks preceding the same in some newspaper published in the corporation, such notice to state the time, respective voting precincts and the polling place in each precinct, and also to specify what questions authorized by law, in addition to the election of director or directors, shall be voted upon and determined by the voters of the several precincts. [31 G. A., ch. 9, § 3; 29 G. A., ch. 125, §§ 1, 2; 28 G. A., ch. 105, § 1; 18 G. A., ch. 8, §§ 1-4.]

Notes: 1. **Registration mandatory.** If precincts have been established registration is required in school corporations having five thousand or more inhabitants.

2. **Registrars—compensation.** Registrars and judges of election who are not members of the board may receive compensation for their services. Section 2755 and attorney-general, 1904, page 298.

3. **Compensation of directors.** Members of the board may not receive compensation as judges of election. Section 2780.

4. **Conducting election—notices—duration.** In cities of five thousand or more see section 2756. In other corporations, sections 2746 and 2754. In subdistricts, section 2751.

Sec. **2756. Conduct of elections.** As judges of the election referred to in the preceding section, the board shall appoint three voters of the precinct, one of whom shall act as clerk, who shall be sworn as provided in case of a general election. Such judges may or may not be members of the board, as the board may determine, provided that not more than one member of the school board shall act as such judge at any one voting precinct. If any person so appointed fails to attend, the judge or judges attending shall fill the place by the appointment of any voter present, and like action shall follow a refusal to serve or to be sworn. Should all of the appointees fail to attend, their places shall be filled by the voters from those in attendance. The board shall provide the necessary ballot box and poll book for each precinct, and the judges shall make and certify a return to the secretary of the corporation of the canvass of the votes for office and upon each question submitted. On the next Monday after the meeting the board shall canvass the returns made to the secretary, ascertain the result of the voting with regard to every matter voted upon, declare the same, cause a record to be made thereof, and at once issue a certificate to each person elected. At all meetings held under this and the next preceding section, the polls shall be kept open from nine o'clock a. m. until seven o'clock p. m. [35 G. A., ch. 245, § 2; 18 G. A., ch. 8, §§ 5, 6.]

Notes: 1. **Compensation of judges.** Judges who are not members of the board may receive compensation. Attorney-general, 1904, page 298.

2. **Polls.** Open at 9 o'clock a. m.; remain open until 7 o'clock p. m. Section 2756. For other corporations, see section 2754. For subdistricts, section 2751.

BOARD OF DIRECTORS—ORGANIZATION—OFFICERS—POWERS

Sec. **2757. Meetings of directors—election of officers.** The board of directors of all independent city, town and village corporations, school townships maintaining school or schools with high school departments, and consolidated independent school districts shall organize on the third Monday in March, and those of all other school corporations on the first day of July, unless that date falls on Sunday, in which case on the day following. Such organizations shall be effected by the election of a president from the members of the board, who shall be entitled to vote as a member. Such special meetings may be held as may be determined by the board, or called by the president, or by the secretary upon the written request of a majority of the members of the board, upon notice specifying the time and place, delivered to each member in person, but

attendance shall be a waiver of notice. Such meetings shall be held at any place within the civil township in which the corporation is situated.

On the first day of July, unless that date falls on Sunday, in which case on the day following, the board of all independent city, town and village corporations and the retiring board in all other school corporations shall meet, examine the books of, and settle with the secretary and treasurer for the year ending on the thirtieth day of June preceding, and for the transaction of such other business as may properly come before it. On the same day the board of each independent city, town and village corporation, except as provided in section twenty-seven hundred fifty-four (2754) of this chapter, and the new board of every other school corporation, shall elect from outside the board a secretary and treasurer, but in independent districts no teacher or other employee of the board shall be eligible as secretary. All officers shall be elected by ballot and the vote shall be recorded by the secretary. Should the secretary or treasurer fail to report as provided in sections twenty-seven hundred sixty-five (2765) and twenty-seven hundred sixty-nine (2769) of this chapter, it shall be the duty of the new board to take any action necessary to secure a proper settlement. [36 G. A., S. F. 156, § 1; 31 G. A., ch. 136, § 3; 18 G. A., ch. 176; 15 G. A., ch. 27; C. '73, §§ 1721-2; R., §§ 2035-6, 2076; C. '51, § 1121.]

Notes: 1. **Settlement.** It is suggested that the retiring board in all rural corporations meet in the morning of the day for the July meeting to settle with the secretary and treasurer and to close up the business for the year. It will be necessary for the retiring board to complete its business in time for the new board to organize and transact its business.

2. **Organization.** The new board should organize immediately thereafter, elect successors to the retiring secretary and treasurer and transact such other business as may come before it.

3. **Adjourned meeting.** If a quorum be not present, the members present should effect a temporary organization (section 2772) and appoint a date and place for an adjourned meeting, at which time a permanent organization may be effected and the business of the annual meeting completed. 75 Iowa, 196.

4. **President must qualify.** The director chosen as president must qualify before assuming the duties of that office. Constitution of Iowa, section 5, article 11.

5. **Special meetings—notice of.** If the president is unwilling to call a special meeting in compliance with a request from members, then a majority of the board may cause a notice of the meeting to be given by the secretary, signed by the members who desire to have the meeting called, which written notice should be by the secretary handed to each member of the board and to the president. Section 2757.

6. **Notice—time of.** As the law is silent with regard to the length of time notice should be given before the time of meeting, it is taken for granted the law intends that a reasonable notice as to the time shall be given. What such reasonable notice is must be determined for each locality by the conditions. However, attendance at such meetings shall be a waiver of notice.

7. **Neglect of duty.** If a school officer habitually or wilfully neglects his duty, and the public good suffers by such negligence, a court may compel him to attend to the necessary duties of his office. 50 Iowa, 648. Section 2822.

8. **Place of meeting.** This section authorizes boards to hold meetings in any district within the same civil township.

9. **Day of meeting.** There is no provision of law that will prevent a board from transacting business upon any day except Sunday.

10. **Failure to elect officers.** If the board fails to elect a president, a secretary, or treasurer, in districts where such officer is elected by the board, upon the day fixed by law or at a meeting adjourned from that day to a day certain, then the incumbent may qualify anew and hold the office for another year. 75 Iowa, 196. But in order that a president may thus hold over, his term as a member of the board must also continue. Section 2757.

11. **Hold but one office.** No person may hold two offices of the board at the same time.

12. **May not be compelled to qualify.** No one may be compelled to qualify as a member or officer of the board.

13. **Duties must be performed.** Any duty imposed upon the board as a body must be performed at a regular or special meeting, and made a matter of record. 47 Iowa, 11.

14. **Consent of individual members.** The consent of the board to any particular measure, obtained of individual members when not in session, is not the act of the board, and is not binding upon the district. 67 Iowa, 164.

15. **Receive reports of committees.** The board may receive and act upon communications from persons selected outside the board to report upon matters referred to such persons as a committee.

16. **Power may not be delegated.** An official trust cannot be delegated. Neither the board nor any member may appoint a substitute to perform the official duties of a member or of the board, but the board may appoint a committee of its number with power to act for the board in a given case.

17. **Adjourned meetings authorized.** Where the law requires a certain duty to be performed by the board upon a fixed day, and does not expressly forbid its performance later than the date mentioned in the law, as for instance the election of a secretary and a treasurer, an adjournment of the meeting to another fixed date will allow the transaction of the business directed to be done on the day of the regular meeting. 75 Iowa, 196.

18. **Director ineligible as secretary or treasurer.** A director is ineligible to the office of secretary or treasurer so long as he remains a member of the board. Section 2757.

19. **Presumption of regularity.** In the absence of proof, it will be presumed on appeal, that the proceedings (of school officers) were regular and the grounds sufficient. 109 Iowa, 169.

20. **Rules and regulations.** The board should adopt necessary rules and regulations to govern the members thereof in their deliberations. This is necessary in order that business may be conducted legally and with dispatch. Section 2772.

21. **Order of business.** To further expedite business, a board should adopt and follow an "order of business." The following is suggested and may be changed to suit the needs of the board. 1. Call to order. 2. Roll call—to determine that a quorum is present. 3. Reading minutes of previous meeting. 4. Reports of standing committees. 5. Reports of special committees. 6. Communications and petitions. 7. Auditing claims. 8. Unfinished business. 9. New business. 10. Fixing salaries. 11. Adjourn.

Sec. 2758. **Qualification of directors—vacancies.** Any member of the board may administer the oath of qualification to any member elect, and to the president of the board. Each director elected in March, 1906, or at any regular election thereafter, shall qualify on or before the date for the organization of the board of the corporation in which he was elected by taking an oath to support the constitution of the United States and that of the state of Iowa, and that he will faithfully discharge the duties of his office; and shall hold the office for the term to which he is elected, and until a successor is elected and qualified. In case of a vacancy, the office shall be filled by appointment by the board until the next annual meeting. In all rural

school corporations, the term of office of directors whose terms expire on the third Monday in March, 1906, is hereby extended to July 1, 1906. [31 G. A., ch. 137; C. '73, §§ 1752, 1790; R., §§ 2032, 2079; C. '51, §§ 1113, 1120.]

Notes: 1. **Oath—who may administer.** Any school director is authorized to administer to a school director-elect the official oath required by law, but the secretary cannot administer this oath unless he is one of the many officers empowered by law to administer oaths.

2. **Oath—when director may take.** A director-elect may take the oath of qualification at any time between the day of election and the close of the day for organization of the board. 53 Iowa, 687; 101 Iowa, 382. Section 2758. A person appointed as a member of the board is required to qualify within ten days. Code, section 1275.

3. **Hold over.** In case a director-elect fails to qualify by the close of the day for the organization of the board, the incumbent may continue in office until the next regular election, but, in order to do so, he must qualify anew within ten days from that time. Code, sections 1265 and 1275.

4. **Failure to qualify.** If a person who is elected as his own successor fails to qualify on or before the day for the organization of the board, a vacancy exists which should be filled by appointment. Code, section 1266.

5. **Term of director.** The term of a director does not begin at the time of his election, but at the time when by statute the regular meeting of the board of directors following the election is to be held, at which the board is to be organized; and if the director elected is ineligible and is therefore unable to qualify, the vacancy is not caused by failure to elect, but by the failure to qualify, and the old director will hold over if he qualifies within ten days from that time. *State v. Cahill*, 131 Iowa, 155; 105 N. W., 691.

6. **Failure to appear.** Failure to appear at the meeting of the board on the day for its organization will not prevent a qualification being valid if the member-elect takes the oath of office before the close of that day.

7. **Time directors serve.** A director continues in office until a successor is elected and qualified, whether chosen by the electors or appointed by the board. Section 1276.

8. **Term. (1) Beginning.** The term of director in independent city, town and village corporations and consolidated districts begins the third Monday of March, and of rural independent districts and school townships on the first of July following his election. Section 2757.

2. **Length of.** In school townships the term of director is one year; in independent corporations, three years. Section 2745.

9. **Filling vacancies. (1) Beginning.** Persons holding over or appointed or elected to fill a vacancy must qualify within ten days. Section 1275.

2. **Length of.** Persons holding over or appointed by the board to fill vacancies serve until their successors, elected at the next regular meeting of the corporation, qualify. Section 1276. Persons chosen by the electors to fill vacancies serve the remainder of the term. Section 1277.

10. **When to qualify—contested election.** When an election is contested, the person elected shall have ten days in which to qualify, after the date of the decision. Code, section 1177.

11. **Refusal to issue certificate of election.** The failure or refusal of the proper officers to issue a certificate to a person duly elected, cannot operate to deprive such person of his rights. The certificate or commission is the best, but not the only evidence of an election, and if that be refused secondary evidence is admissible. McCrary on elections, section 171; decision, 11. Mandamus is the proper remedy to compel the board of canvassers to declare elected and certify to the election of the party receiving the highest number of votes. 36 Iowa, 291.

12. **Board determines identification of members.** While a board may use its own judgment as to who shall or who shall not be received as a member of the board, any one aggrieved has his remedy through the courts; that is, the membership of the board is not finally determined by any action of the board. 125 Iowa, 193.

13. **Title—how determined.** The right or title to hold office cannot be determined by an appeal to the county superintendent. The proper remedy for any person aggrieved by the action of the board relating thereto is a petition to the district court. Code, sections 4313 and 4320; decision, 11. Quo warranto is the proper proceeding to determine the title to an office. 125 Iowa, 193.

14. **Province of courts.** It is the exclusive province of the courts to determine questions with relation to any vote of a school meeting or with relation to the choice of members of the board or officers of the board. Decision, 20.

15. **Elections—regular.** Sections 2746, 2751, 2754; to fill vacancy, section 2771.

Sec. **2759. President—employment of counsel.** The president of the board of directors shall preside at all of its meetings, sign all warrants and drafts, respectively, drawn upon the county treasurer for money apportioned and taxes collected and belonging to his school corporation, and all orders on the treasurer drawn as provided by law, sign all contracts made by the board, and appear in behalf of his corporation in all actions brought by or against it, unless individually a party, in which case this duty shall be performed by the secretary. In all cases where actions may be instituted by or against any school officer to enforce any provision of law, the board may employ counsel, for which the school corporation shall be liable. [19 G. A., ch. 46; C. '73, §§ 1739-40; R., §§ 2039-40; C. '51, §§ 1122-3, 1125.]

Notes: 1. **President may not hold over.** A president whose term as director has expired may take no further part in the board, even though a new president has not been chosen.

2. **President may vote.** The president has the right to vote on all questions coming before the board. If by such vote a tie is produced, the motion is lost. Section 2757.

3. **Temporary president.** When the board is without a president, a temporary president may be appointed from the members of the board, who, during the time he is acting as president, may sign orders and contracts and do all other acts proper to be done by the president, but he is not authorized to act except when the board is in session. Section 2772.

4. **Order book—custodian of.** The secretary is the custodian of the order book. He fills out the orders, which the president afterward signs. Section 2762.

5. **Order must indicate fund.** To be valid, an order must express upon its face the fund on which it is drawn, and name the purpose for which it was issued. Section 2762.

6. **Failure to attach official title.** The failure of an officer to attach his official title to his signature will not affect the instrument so far as the district is concerned, provided the writing was authorized, and made for the district, and this fact can be shown. 7 Iowa, 509; 11 Iowa, 82.

7. **Personal liability.** Unless the fact that official approval was authorized can be shown, personal liability may follow. 59 Iowa, 696.

8. **Authority for signing.** An order on the treasurer may be drawn only by the authority of the board. Section 2780.

9. **Expense of litigation.** The expense in suits provided for by this section should be paid from the contingent fund. Section 2768.

10. **Appeals not actions.** Appeals to the county superintendent or superintendent of public instruction, are not actions brought by or against the district, nor are they actions brought by or against any of the school officers, within the meaning of the law, and no charge can be made against the district for attorney fees. 36 Iowa, 411.

11. **President may not bring suits.** The president does not have authority to bring suits in the name of the corporation on his own motion. 85 Iowa, 387.

12. **Service of notice.** Service of notice may be made on either the president or the secretary. Code, section 3531.

Sec. 2760. **Bonds of secretary and treasurer.** The secretary and treasurer shall each give bond to the school corporation in such penalty as the board may require, and with sureties to be approved by it, which bond shall be filed with the president, conditioned for the faithful performance of his official duties, but in no case less than five hundred dollars. Each shall take the oath required of civil officers, which shall be indorsed upon the bond, and shall complete his qualification within ten days. In case of a breach of the bond, the president shall bring action thereon in the name of the school corporation. [15 G. A., ch. 27; C. '73, §§ 1721, 1731; R., §§ 2035, 2037, 2076; C. '51, § 1144.]

Notes: 1. **Official bond.** The law requires all official bonds to be secured by at least two sureties who are freeholders, and whose aggregate property is double the amount of the bond, the oath of office to be subscribed on the back of the bond, or attached thereto, and the sureties to make affidavit that they are worth the amount named. A guarantee company may be accepted as surety. Sections 360 and 1187.

2. **Sureties and principal must qualify.** At least two sureties are required, who must be resident freeholders of this state, and each of whom must make an affidavit as surety. Both the principal and the sureties must qualify before some one empowered to administer oaths. Code, sections 358 and 359.

3. **Requalify.** If the treasurer is re-elected, or continues in office by reason of failure to elect a successor, his bond must be renewed and he should produce and account for the funds in his hands, and the statement of such settlement should be endorsed upon his new bond before the same is approved by the board. Code, section 1193.

4. **Liability of treasurer.** The treasurer of a school district is absolutely liable for all money coming into his hands by virtue of his office. 40 Iowa, 130; 37 Iowa, 550; 80 Iowa, 497.

5. **Member should not be surety.** As the bonds of the secretary and the treasurer must be approved by the board, no member should become surety for one of these officers.

6. **Failure to give bond.** Any officer whose duty it is to give bonds for the proper discharge of the duties of his office, and who neglects so to do, is guilty of a misdemeanor and is liable to a fine. Code, section 1197.

7. **Liability of board.** A board approving bonds known to be insufficient, does not discharge the duty incumbent upon it, and is liable on a charge of misdemeanor. 14 Iowa, 510; 18 Iowa, 153. Code, section 4904.

8. **Additional security.** Any officer or board who has the approval of another officer's bond, when of the opinion that the public security requires it, upon giving ten days' notice to show cause to the contrary may require him to give such additional security by a new bond, within a reasonable time to be prescribed. Code, section 1281.

9. **Relief of surety.** By petitioning the board a surety may ask to be relieved from his obligation on a bond. Code, sections 1283 and 1285.

10. **Board not bound to notify.** The board of directors is not bound to notify or warn sureties of the dishonesty of a re-elected treasurer.

11. **All qualify.** All the officers of the board must take the oath of office as prescribed by section 5, article 11, of the constitution.

12. **When qualify.** The secretary and the treasurer have ten days in which to qualify.

13. **Guarantee company may become surety.** Any association or corporation which does the business of insuring the fidelity of others, and which has authority by law to do business in this state, shall be accepted as surety upon bonds required by law, with the same force and effect as sureties above qualified. Code, section 1187.

14. **Guarantee company's certificate.** Any company engaged in the business of becoming surety upon bonds shall file, with the clerk of any county in which it shall do business, a certificate from the state auditor that it has complied with the law and is authorized to do business in this state; and should said authority be withdrawn at any time, the state auditor shall at once notify the clerk of each district court to that effect. Code, sections 359 and 360, 2768.

15. **Settlement.** Where the treasurer about to succeed himself in office makes a settlement wit hthe board as by statute provided, producing in some tangible form the money which he should have on hand, the sureties on his new bond are conclusively bound thereby and they will be estopped from pleading or proving that the funds so exhibited were borrowed or otherwise temporarily or fraudulently procured and never in fact went into the public treasury. But where the money is not produced in any form and the board charged by law with making the settlement accepts a mere book account or personal statement of the treasurer that he has the funds in his possession, then the liability on the bond is *prima facie* only and the sureties will be relieved if it be fairly established that the shortage originated during the prior term. *Independent School Dist. v. Herkenrath*, 155 Iowa, 275; 135 N. W. 1086.

Sec. **2761. Duties of secretary.** The secretary shall file and preserve copies of all reports made to the county superintendent, and all papers transmitted to him pertaining to the business of the corporation; keep a complete record of all the proceedings of the meetings of the board and the voters of the corporation in separate books; keep an accurate, separate account of each fund with the treasurer, charge him with all warrants and drafts drawn in his favor, and credit him with all orders drawn on each fund; and he shall keep an accurate account of all expenses incurred by the corporation, and present the same to the board for audit and payment. At the annual meeting he shall record, in a book provided for that purpose, the names of all persons voting thereat, the number of votes cast for each candidate, and for and against each proposition submitted. The secretary of each independent town or city district shall file monthly, on or before the tenth day of each month, with the board of directors, a complete statement of all receipts and disbursements from the various funds during the preceding month, and also the balance remaining on hand in the various funds at the close of the period covered by said statement, which monthly statements shall be open to public inspection. [35 G. A., ch. 246, § 1; C. '73, §§ 1741, 1743; R., §§ 2041-2; C. '51, §§ 1126, 1128.]

Notes: 1. **Importance of secretary's work.** A large amount of labor devolves upon the secretary. The fidelity and promptness with which he attends to his duties make his assistance very valuable to the board and the district, and determine, in a large degree, the accuracy and completeness of his annual report to the board and to the county superintendent.

2. **Minutes—keeping of.** It is essential that the record of the proceedings of the board and of the district meetings should be properly kept. Every transaction should be carefully noted, and the proceedings read and approved. Decisions, 118, 113.

3. **Minutes as evidence.** The minutes of a meeting as recorded at the time by the secretary, must be regarded the best evidence as to the understanding the board had of a subject, at the time the question was voted upon. Decisions, 8, 29, 31 and 43.

4. **Proceedings submitted to board.** The proceedings of any meeting in relation to voting schoolhouse taxes, must be submitted by the secretary, who is the proper custodian of the records, to the board, to form the basis of its action in appropriating and certifying schoolhouse taxes to the board of supervisors. Section 2806.

5. **Failure to record proceedings in separate books.** The failure of the secretary to record all the proceedings of the board and of the district meetings in separate books, kept for that purpose, will not render the proceedings void. 8 Iowa, 298.

6. **Public records may be inspected.** Public records are public property, and are open to inspection at proper times by any citizen. No public officer may refuse examination of the records, but as he is their custodian, and is charged with their safe keeping, he must keep them in his possession.

7. **Records—certified copy of.** Every officer having the custody of a public record or writing is bound to give any person, on demand, a certified copy thereof on payment of the legal fees therefor. Code, section 4638.

8. **May not act.** The secretary may not act as president or treasurer of the board.

9. **Librarian.** The secretary, as the clerical officer of the board, cares for the records of the district (section 2761) and is the librarian of the corporation, unless the board appoints some other person. Section 2823-r.

10. **Cash account.** The secretary is required by this section to keep an account current with the district treasurer. This account, properly kept, will assist the board in its frequent settlements with the treasurer, as required by section 2780.

11. **Minutes—correction of.** A court of equity may hear parol evidence to correct the record. 110 Iowa, 707.

12. **Check with treasurer.** The secretary should before the annual meeting check his books with those of the district treasurer.

Sec. 2762. **Warrants.** He shall countersign all warrants and drafts upon the county treasurer drawn or signed by the president; draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign and keep a register of the same, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at each regular annual meeting furnish the board with a copy of the same. [31 G. A., ch. 136, § 4; 19 G. A., ch. 46; C. '73,§§ 1739, 1782; R., §§ 2039, 2061; C. '51, §§ 1122-3.]

Notes: 1. **Claims must be audited.** All demands, whether by contract or otherwise, must be approved by the board when in session, before an order may be drawn on the treasurer, and the secretary shall draw no order unless he is authorized to do so by a vote of the board, at a regular or special meeting. Section 2780.

2. **Secretary holds the order book.** The secretary should hold the order book, for by this means he can better keep his records, make the transcript to the treasurer of orders drawn, and more easily make his final report to the board in July. Section 2762.

3. **Comply with lawful instructions.** The secretary, president, and treasurer, must conform to the instructions of the board, as far as those directions are in accordance with law, but they should not comply with an instruction directing them to do an illegal act. Section 2760.

4. **When warrant should be refused.** If the board appropriates money to pay its members or for any other illegal purpose, the secretary should refuse to draw and the president should decline to sign the order, and, if drawn, the treasurer should refuse to pay it. Section 2760.

5. **How relieved from responsibility.** A member may relieve himself of the responsibility of an illegal act of the board, by moving that the ayes and noes be taken, and by voting no on the unlawful proposition. Members of the board are not liable to prosecution for errors when not shown that they acted in bad faith. 69 Iowa, 533.

6. **Teachers' salaries.** The board may authorize the president and secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed, but the order for wages for the last month should not be drawn until the full report required by section 2789 is filed in the office of the secretary.

7. **Warrants—when illegal.** School orders issued without a vote of the board, or otherwise illegally issued, although they may be signed by the president and countersigned by the secretary, are not binding upon the district, neither can they acquire validity by being transferred to third parties. If illegal when issued, they are illegal forever. 19 Iowa, 199 and 248. Decision, 13.

8. **Not negotiable.** An order is not a negotiable paper. It is subject to all equities and defenses to which it would have been subject in the hands of the payee. 22 Iowa, 595; 29 Iowa, 339, and 92 Iowa, 676.

9. **Defects not removed by transfer.** An order issued illegally does not acquire validity by transfer. See note 8.

10. **Terms of.** School orders may not be drawn payable on time, nor should any mention regarding interest be in the order. An order may not be made payable at any other place than the treasury of the district. Section 2768.

11. **Registration.** The registry of orders is an important matter. Every order drawn should be promptly reported to the district treasurer, as he has no other means of determining the amount of outstanding orders, and otherwise cannot comply with the law requiring him to make partial payments. Section 2768.

Sec. **2763-a. Notice of special meetings in school corporations—divided into precincts.** The secretary of the board of directors of any school corporation which is divided into precincts, shall give notice of all special meetings of the voters, as provided by section twenty-seven hundred fifty-five (2755) of the supplement to the code (1902). Each notice shall state the date, place and hours during which the meeting will be in session, and the object of the meeting. [31 G. A., ch. 138, § 2.]

Notes: 1. **Computing time.** The statutory mode of computing time excludes the day on which the notice is posted, and includes the day of meeting. 61 Iowa. 303. Code, section 48, subdivision 23. Forms 8 and 11.

2. **Notice necessary.** Failure to comply with the law with respect to the notice invalidates the proceedings of the meeting, even if regular in other respects. Sections 2746, 2749, 2750, 2755. 118 Iowa, 207.

3. **Kind of notice.** It follows that notice through the newspapers or any other notice than as named in the law, will not take the place of the kind of notice required by the law, given in the manner indicated.—Publication and posting.

4. **Proving.** The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness attached to a copy of said notice or paper and made within six months of the time of such posting up. Code, section 4681.

Sec. **2763-b. Notice of special meetings in independent corporations of less than five thousand.** The secretary of the board of directors for any school corporation, located wholly within or partly within the corporate limits of cities of the first class, cities of the second class, or incorporated towns, which may not have adopted the provisions of section twenty-seven hundred fifty-five (2755) of the supplement to the code (1902) and divided into precincts, shall give notice of special meeting of the voters in the same manner as for the annual meeting, by posting at least five notices in five public places within said corporation, for not less than ten days next preceding the day of special meeting. Each notice shall state the date, place and hours during which the meeting will be in session, and the object of the meeting. [31 G. A., ch. 138, § 3.]

Note: See notes to section 2763-a.

Sec. **2763-c. Notice of special meetings in school townships.** The secretary of the board of directors for any school township or for any school corporation not included in the preceding sections, shall give ten days' printed or written notice of special meeting to the voters, posted in at least five public places within the corporation. The notice shall be posted at the door of each schoolhouse, and also at or near the last place of meeting, and each notice shall state the date, place and hours during which the meeting will be in session and the object of the meeting. [31 G. A., ch. 138, § 4.]

Note: See notes to section 2763-a.

Sec. **2764. Register of persons of school age.** He shall, between the first day of June and the first day of July of each year, enter in a book made for that purpose, the name, sex and age of every person between five and twenty-one residing in the corporation, together with the name of the parent or guardian. [31 G. A., ch. 136, § 5; C. '97, § 2764.]

Notes: 1. **Time.** The law intends that no part of the enumeration shall be taken before the first day of June. What is desired is that the number of persons of the ages of five to twenty-one having an actual residence in a corporation on the first day of June, shall be enumerated in that corporation. No enumeration shall be made after the first day of July.

2. **Whom to include in the enumeration.** Every person between five and twenty-one should be enumerated where he resides. A child in one of the charitable or reformatory institutions temporarily, and whose parents or guardian reside in another part of the state, or in another school district, is a resident of the district in which his parents reside, and should be enumerated there. If in the institution to remain permanently, having no parents or guardian, his residence is in the district in which the institution is located, and he should be enumerated therein.

3. **What desired.** The actual truth as to the number of school age is what is sought. Anything else disturbs the equality which by right exists, and prevents all from receiving exact justice in the apportionments.

4. **How obtained.** The number of persons of school age can be obtained only by a careful and conscientious census. It includes all persons between five and twenty-one years having a residence within the district, even if married.

5. **Rights of each district.** Each district deserves credit for every one of proper age, but is entitled to no more. It is obvious that a guess or estimate regarding even a single individual is to be avoided. Section 2808.

6. **By whom taken.** In the independent districts it is the duty of the secretary to take the annual school enumeration required by the first clause of this section, unless the board assigns the duty to another person. In any case proper extra compensation should be given for the work required, if the district is a large one. Section 2764.

7. **Joint districts.** In districts formed of parts of two or more counties, the secretary should make the annual report to the county superintendent having jurisdiction over that school and its teachers, and with whom they register their certificates. This report should not include those children who reside in portions of the district lying in other counties. The remaining number of children should be reported by the secretary to the superintendents of the counties having territory in such district.

8. **Guardian.** Upon the death of both parents the grandfather or grandmother, if living, becomes the natural guardian of an orphan infant. 127 Iowa, 625.

9. **School census—seven to sixteen.** At the time of making the enumeration of those of the ages of five to twenty-one, the secretary shall make a list of those of the ages of seven to sixteen and of those of seven to sixteen not attending school, as provided in section 2823-a. Section 2823-i.

10. **Seven to sixteen, inclusive—meaning.** See section 2823-a, note.

Sec. **2765. Reports.** He shall notify the county superintendent when each school is to begin and its length of term, and within five days after the regular July meeting in each year, file with the county superintendent a report which shall give the number of persons in the corporation, male or female, of school age, the number of schools and branches taught, the number of scholars enrolled and average attendance in each school, the number of teachers employed and the average compensation paid per month, distinguishing the sexes, the length of school in days, and the average cost of tuition per month for each scholar, the text-books used, number of volumes in library, the value of apparatus belonging to the corporation, the number of schoolhouses and their estimated value, the name, age, and postoffice address of each deaf and dumb, or blind person in the corporation between the ages of five and twenty-one years, and this shall include those who are so blind or deaf as to be unable to obtain an education in the common schools, a like report as to all feeble-minded children of and between such ages, and the number of trees set out and in a thrifty condition on each schoolhouse ground. [31 G. A., ch. 136, § 6; 19 G. A., ch. 23, § 3; 16 G. A., ch. 112, § 1; C. '73, §§ 1744-5; R., § 2046; C. '51, §§ 1127-8.]

Notes: 1. **Data.** The name of the teacher should be given, and any other information which will aid the county superintendent in planning his work of visitation, provided for in section 2734-b.

2. **Annual reports.** The blanks for the annual report of the secretary are furnished by the state through county superintendents. The secretary should copy the report required by this section, in the district records. If the original report is filed in his office, it is liable to be destroyed or mislaid, which may prove detrimental to the interests of the district.

3. **Early report desired.** A county superintendent should receive the secretary's report at once following the annual meeting. The county superintendent cannot complete his annual report till every secretary's report is filed. One delinquent secretary may block the annual report for days.

4. **Accuracy.** The secretary should be accurate in making his report. Uncertain figures are of little value. The report should not be made up hastily but should be carefully made out before the date of annual meeting.

5. **Daily register.** Every teacher should take great pains to keep very carefully the register required by section 2789, in order that the report required by this section may be made out correctly. By the teacher's doing so the secretary will be able to make his annual report with greater ease, and with added accuracy.

6. **Auditor may not review census.** The auditor in apportioning school taxes has no authority to review the school census reported to him by the secretaries of school townships, and cannot be restrained by injunction from acting on the census as thus reported because of the misconduct of a district secretary in taking the census of his township. *Judson v. Agan*, 134-557, 111 N. W. 943.

Sec. 2766. **Officers reported.** He shall report to the county superintendent, auditor and treasurer the name and postoffice address of the president, treasurer and secretary of the board as soon as practicable after the qualification of each, [C. '73, § 1736.]

Note: 1. It is very important that the secretary should file the certificate with the county officers named, immediately after the regular meetings of the board in March and July, otherwise funds belonging to the district may be paid to persons not authorized to receive them. Whenever a change is made the county officers should be notified.

Sec. 2767. **Certifying tax.** Within five days after the board has fixed the amount required for the contingent and teachers' fund, he shall certify to the board of supervisors the amount so fixed, and at the same time shall certify the amount of schoolhouse tax voted at any rgular or special meeting. In case a schoolhouse tax is voted by a special meeting after the above certificate has been made and prior to the first day of September following, he shall forthwith certify the same to the board of supervisors. He shall also certify to such board any provision made by the board of directors for the payment of principal or interest of bonds lawfully issued. [C. '73, §§ 1777, 1823; R., §§ 2037, 2044.]

Notes: 1. The secretary has no discretion but must certify the tax to the board of supervisors. He should also certify to the board of supervisors any provision made by the board of directors for the payment of principal or interest of bonds lawfully issued. 141 Iowa, 43.

2. **Use form.** To avoid errors the secretary should use forms furnished by the county superintendent in certifying the amount of tax fixed.

3. **Excessive schoolhouse tax.** The fact that the electors at their annual meeting voted a schoolhouse tax in excess of that which is legal to be levied in one year does not render the election void. The supervisors should make only the legal levy. 141 Iowa, 43.

4. **Meeting to rescind a tax voted—discretionary.** A board of directors may call a special meeting of the electors, when petitioned, to vote upon the question of rescinding a former vote authorizing a schoolhouse tax, provided no part of the tax has been collected; but the matter is discretionary with the board and the courts will not require it to act. 141 Iowa, 43.

Sec. 2768. **Duties of treasurer—payment of warrants—deposit of funds—interest.** The treasurer shall receive all moneys belonging to the corporation, pay the same out only upon the order of the president countersigned by the secretary, keeping an accurate account of all receipts and expenditures in a book provided for that purpose. He shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the

purpose and amount. The money collected by tax for the erection of schoolhouses and the payment of debts contracted therefor shall be called the schoolhouse fund; that collected for the payment of school buildings, bonds shall be called the school building bond fund; that for rent, fuel, repairs and other contingent expenses necessary for keeping the school in operation, the contingent fund; and that received for the payment of teachers, the teachers' fund; and he shall keep a separate account with each fund, paying no order that fails to state the fund upon which it is drawn and the specific use to which it is to be applied. Whenever an order cannot be paid in full out of the fund upon which it is drawn, partial payment may be made. All school orders shall draw lawful interest after being presented to the treasurer and by him indorsed as not paid for want of funds. It is hereby made the duty of the treasurer of each school corporation to deposit all funds in his hands as such treasurer in some bank or banks in the state at interest at the rate of at least two per cent. per annum on ninety per cent. of the daily balances payable at the end of each month, all of which shall accrue to the benefit of the contingent fund of such school corporation; but before such deposit is made, such bank shall file a bond with sureties to be approved by the treasurer and the board of directors of such corporation in double the amount deposited, conditioned to hold the school corporation harmless from all loss by reason of such deposit or deposits; provided that in cases where an approved surety company's bond is furnished, said bond may be accepted in an amount equal to ten per cent more than the amount deposited. Said bond shall be filed with the president of the school board and action may be brought thereon either by the treasurer or the school corporation as the board may elect. [35 G. A., ch. 247, § 2; 31 G. A., ch. 139; C. '73, §§ 1747-50; R., §§ 2048-50; C. '51, §§ 1138-40.]

Notes: 1. **Custodian.** The language of this section is very explicit. It makes the treasurer the custodian of all moneys belonging to the district, which effectually precludes the idea of dividing the money belonging to any particular fund among the subdistricts. Decisions, 14.

2. **Use of funds.** The treasurer may pay out the funds only on the order of the president, countersigned by the secretary, and the president may not sign an order unless he is authorized to do so by the board. Sections 2768 and 2780.

3. **Claims must be audited.** No order shall be drawn on the district treasury, until the claim for which it is drawn has been audited and allowed. Section 2780.

4. **Orders—order of payment.** In making payment, when there is not sufficient money on hand to pay all outstanding orders, one order may not be given preference over another. 40 Iowa, 620.

5. **Loaning.** Neither the electors nor the board may authorize the treasurer to loan money belonging to the district. Code, sections 4840 and 2769.

6. **Responsibility of treasurer.** The treasurer is responsible for all moneys coming into his hands by virtue of his office, even if stolen or destroyed by fire. The board has no authority to release him, unless he accounts in full for all moneys received by virtue of his office. 37 Iowa, 550; 39 Iowa, 9; 40 Iowa, 130, and 80 Iowa, 497.

7. **Depositing.** It is compulsory for the treasurer to deposit the money in some safe and secure bank; but the treasurer and his bondsmen are fully responsible.

8. **Deposits not preferential claim.** A deposit of school funds in a bank does not make the banker a trustee nor does the account become a preferred claim in case of bank failure. 139 Iowa, 58.

9. **May not reimburse.** The spirit of our law forbids the electors to vote schoolhouse funds to reimburse a treasurer or his bondsmen for a loss of the money belonging to the district. There is no way under the law by which the treasurer and his bondsmen may be released from absolute liability. Note 6.

10. **No highway fund.** There is no authority in law for a county treasurer and a district treasurer to keep a part of the schoolhouse fund separate as a so-called highway fund or library fund. It is obvious that all moneys collected as voted by the electors must belong to the schoolhouse fund, the contingent fund, the school house or the school building bond fund. Section 2768.

11. **Cost of removal.** When possible, it is desirable that the cost of removing and repairing schoolhouses shall be paid from the schoolhouse fund. If there is no schoolhouse fund on hand unappropriated, the expense of removal, if not too considerable, may be paid from the contingent fund.

12. **Flag staff.** Contingent fund may be used to erect a flag staff upon the schoolhouse or a flag pole upon the school grounds for the purpose of displaying a school flag. A steel staff made of gas pipe set in cement is very satisfactory.

13. **Minor improvements.** Minor improvements, such as the erection of ordinary outhouses, storm caves, fences, and the like, may be paid for from either the contingent or the schoolhouse fund.

14. **Ordinary repairs—rebuilding.** Ordinary repairs should be charged to the contingent fund; but when such repairs assume the magnitude of a rebuilding, or of an extensive addition, they should be charged to the school house fund.

15. **Use of unappropriated schoolhouse fund.** Any unappropriated schoolhouse fund in the district treasury may be used for the erection or repair of schoolhouses, at the discretion of the board, without the action of the electors.

16. **Seating.** The cost of seating new schoolhouses should be paid from the schoolhouse fund. The law does not authorize the use of the contingent fund for the erection or completion of schoolhouses, but when a house needs reseating or other repairs, the cost may be defrayed either from the contingent fund, or from any unappropriated schoolhouse fund in the treasury. 25 Iowa, 436.

17. **School furniture.** The term school furniture, as generally used in our state, means school desks, tables, chairs, and such similar articles as are closely related to making the schoolhouse more suitable for its use as a schoolhouse; school apparatus has been understood to include the articles mentioned in section 2783, or such similar articles as would clearly come under the same designation for use in the schools for the purpose of instruction.

18. **Transfer of funds.** Boards have no authority to transfer money from one fund to another, even temporarily, unless they are authorized by the electors under section 2749, subsection 5, to transfer any surplus in the school house fund to another fund. Notes 3 and 4 to section 2810.

19. **Teachers' fund not divided.** The teachers' fund should not be divided among the subdistricts, equally, according to the number of children, or upon any other basis. This fund can be paid out only to teachers for services, upon orders authorized by the board.

20. **Order must specify fund.** The treasurer shall pay no order which does not specify the fund on which it is drawn, and the specific use to which the money is applied.

21. **Tuition belongs in teachers' fund.** Tuition fees collected from non-residents belongs to the teachers' fund.

22. **Teachers' fund—use of.** No part of the teachers' fund may be used for any other purpose than to pay teachers or to pay tuition of pupils attending school in another district under sections 2774 and 2803; except the amount withheld from the apportionment for the purchase of library books. Section 2823-n.

23. **Register of orders.** The law requires both the secretary and the treasurer to keep a register of all orders drawn on the district treasury, containing a record of each item enumerated. Sections 2762, 2768.

24. **School orders—terms of.** The board has no authority to make a contract by which school orders shall draw interest before their presentation nor a higher rate than six per cent. 90 Iowa, 53.

25. **Caves.** The board of directors may build a cave near the schoolhouse, using any unappropriated schoolhouse or contingent fund for that purpose.

26. **Secretary furnish list of orders.** It is essential that the treasurer should know the exact amount of outstanding orders, and for this reason the secretary is required to report to him all orders drawn on the district treasury. Section 2762.

27. **Register—importance.** The register provided for in this section is indispensable to the treasurer, under the law requiring him to make partial payments on orders when he has not funds sufficient to pay them in full. 40 Iowa, 620.

28. **When treasurer may refuse to pay.** The treasurer may rightly object to paying an order that is defective in any of the particulars named. It is especially essential that the purposes for which the order was given shall be written in the order. The stub in the order book should also be properly filled out and carefully preserved.

29. **Partial payment.** The provision as to partial payment applies to all orders on that fund. The holder of an order drawn to pay a judgment cannot insist on its being satisfied in full to the exclusion of other orders. 40 Iowa, 620.

30. **Indorsement for want of funds.** By keeping a correct account of the orders as by form 18, the treasurer will know the amount outstanding, and can readily determine what per cent on each he can pay with the funds on hand. When requested by the holder, he should indorse an order so that the amount remaining unpaid may draw legal interest. Section 2768.

31. **Payments should be indorsed.** Whenever partial payment is made, the treasurer should indorse the payment on the order and take a receipt for the amount paid. When paid in full, the order should, in all cases, be indorsed by the person presenting it, and left with the treasurer. It is then a voucher for the amount paid. Section 2768.

32. **To compel payment.** The remedy of any one holding an order which the treasurer refuses to pay or indorse is application to a court for a writ to compel such officer to make payment. At the final hearing before the court it will be definitely determined whether the order is of such character that it should be either paid by the treasurer or indorsed by him as not paid for want of funds. Section 2768.

33. **Limit of taxation.** See sections 2749, 2753, 2806, 2813, 2825.

34. **Reimbursement.** Where a township treasurer expecting to be reimbursed paid warrants from his individual funds, at a time when the public funds were rendered unavailable by the closing of the bank in which they were deposited, he was entitled to recovery therefor from the township, when through insolvency the funds were lost. 158 Iowa, 120.

35. **Bank liability.** A bank in which the proceeds of the school bond sale is deposited is liable for the interest while held. Attorney General.

36. **Duty of treasurer.** It is the duty of the treasurer to deposit school funds in the bank or banks and he is to select the bank or banks, but the board must approve the bond. Attorney General.

37. **Treasurer must account for interest.** The school treasurer must account for interest on school funds and may not draw a salary. Attorney General.

Sec. 2769. **Financial statement.** He shall render a statement of the finances of the corporation whenever required by the board, and his books shall always be open for inspection. He shall make an annual report to the board at its regular July meeting, which shall show the amount of the teachers' fund, the contingent fund, and the school-

house fund held over, received, paid out, and on hand, the several funds to be separately stated, and he shall immediately file a copy of this report with the county superintendent. [31 G. A., ch. 136, § 7; 16 G. A., ch. 112, § 2; C. '73, § 1751; R., § 2051; C. '51, § 1141.]

Notes: 1. **Settlement.** The interest and protection of the taxpayers require that a full and complete settlement should be made at least once each year, and more frequently if deemed necessary, and that the settlement at the July meeting requires that the funds and property shall be produced and fully accounted for, and that these facts should be indorsed upon the new bond of the treasurer, if he is re-elected. Code, section 1193, quoted in note 9 below. 69 Iowa, 269; 91 Iowa, 198, and 110 Iowa, 58.

2. **Treasurer—may demand.** The outgoing treasurer and his bondsmen have a right to expect and to require that the board shall make a complete settlement, and the treasurer may demand and receive written evidence that such settlement is complete. 110 Iowa, 58.

3. **Responsibility.** The responsibility of the treasurer and his bondsmen to the district is absolute, and it rests with the treasurer to deposit the money in a bank, according to law.

4. **Officers may not be released.** It is not within the power of even the electors to release the board or its officers from their obligation to protect the funds of the district.

5. **Terms sureties liable.** The sureties on an official bond may be held for three years from the time that it is presumed an irregularity occurred. Code, section 3447. 91 Iowa, 198.

6. **Vouchers preserved.** The vouchers of the treasurer should not be destroyed until after three years from the expiration of a term of office. The stub books of the secretary should also be retained, and not destroyed until after several years.

7. **Arbitration.** In making settlement, the board may submit a difference with the treasurer, to arbitration. 70 Iowa, 65.

8. **Re-elected—requalify.** When the incumbent of the office of secretary or treasurer is re-elected, he shall qualify anew, as directed by section 2760 of the code, and when the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer. Code, section 1193. 110 Iowa, 58.

9. **Hold over—requalify.** When it is ascertained that the incumbent is entitled to hold over by reason of the non-election of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew, within ten days. Code, section 1275.

10. **Embezzlement.** If any state, county, township, school or municipal officer. or officer of any state institution, or other public officer within the state, charged with the collection, safe keeping, transfer or disbursement of public money or property, fails or refuses to keep the same in any place of custody or deposit that may be provided by law for keeping such money or property until the same is withdrawn therefrom as authorized by law, or keeps or deposits such money or property in any other place than in such place of custody or deposit, or unlawfully converts to his own use in any way whatever, or use by way of investment in any kind of property, or loans without the authority of law, any portion of the public money intrusted to him for collection, safe keeping, transfer or disbursement, or converts to his own use any money or property that may come into his hands by virtue of his office, he shall be guilty of embezzlement to the amount of so much of said money or the value of so much of said property as is thus taken, converted, invested, used, loaned or unaccounted for, and shall be imprisoned in the penitentiary not exceeding ten years, and fined in a sum equal to the amount of money embezzled or the value of such

property converted, and shall be forever after disqualified from holding any office under the laws of the state. Any such officer who shall receive any money belonging to the state, county, township, school or municipality, or state institution of which he is an officer, shall be deemed to have received the same by virtue of his office, and in case he fails or neglects to account therefor upon demand of the person entitled thereto, he shall be deemed guilty of embezzlement, and shall be punished as above provided. Code, section 4840.

11. **Blanks.** The blanks for the annual report of the treasurer are furnished by the state, through the county superintendents.

12. **Treasurer's report to county superintendent.** Treasurers should not fail to mail a copy of their annual report at once to the county superintendent, as only by timely attention on the part of the treasurers, can the county superintendent compile and forward his annual report to the superintendent of public instruction, on the last Tuesday in August.

Sec. 2770. **Surrendering office to successor.** Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers and moneys pertaining or belonging to the office, taking a receipt therefor. [C. '73, § 1791; R., § 2080.]

Note: 1. **What included.** The language of this section includes copies of the school laws, reports, and all other publications which may be received by virtue of being a school officer.

Sec. 2771. **Quorum of board—filling vacancies.** A majority of the board of directors of any school corporation shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. Vacancies occurring among the officers or members shall be filled by the board by ballot, and the person receiving the highest number of votes shall be declared elected, and shall qualify as if originally elected or appointed. When the board is reduced below a quorum, by resignation or otherwise, the secretary of the board, or if there be no secretary, the county superintendent shall call a special election to fill the vacancies, giving notice in the same manner as for the annual meeting on the second Monday in March. [32 G. A., ch. 150; 28 G. A., ch. 106; 24 G. A., ch. 19; C. '73, §§ 1730, 1738; R., §§ 2037-38.]

Notes: 1. **Necessary to carry.** In the absence of a direct provision of law, or of a by-law requiring majority vote of all the board, a majority of the votes of a quorum will carry a measure.

2. **Removal.** Boards have no authority to remove any member or officer of the board. Such removal may be made only by the courts. Code, section 1251.

3. **Neglect—misdemeanor.** Willful neglect to perform duty is a misdemeanor. Code, sections 4904, 4906.

4. **Neglect—punishment.** If a director habitually or wilfully neglects the duties of his office he may be compelled by mandamus to perform them. Section 2822. 50 Iowa, 648.

5. **Vacancy—how created—how filled.** A vacancy can be created only by death, removal, resignation, or failure to elect at the proper election, there being no incumbent to continue in office. Code, section 1266. A failure to elect or qualify does not create a vacancy, for the incumbent, whether elected or appointed, continues in office "until his successor is elected and qualified." Code, section 1265. If the incumbent does not qualify, a vacancy exists. A vacancy may be filled by appointment of the board. This appointment must be made by ballot. The president of the board may not appoint in session of the board or out. The ballot to fill vacancy must be taken at a duly called meeting of the board.

6. **Resignation.** School directors may resign at any time. A verbal or written resignation may be tendered to the board when in session, or a written resignation may be handed to some member to be presented at a subsequent meeting, for acceptance by the board.

7. **Change in subdistrict.** If a subdistrict is divided, so as to form a new one, the resident director will continue to act as though no change had been made, until the organization of the new board in July following the next regular annual election. However, on the first Monday in March, directors shall be chosen according to the new subdistrict boundaries. Section 2802.

8. **Legality of acts of de facto officers.** If a person without the requisite qualifications, is elected a member of the board and acts with the board, being a member de facto, his acts will be valid, but when his disqualification becomes known, the board shall declare the place vacant and appoint his successor. 23 Iowa, 96; 110 Iowa, 382.

9. **Ratification of acts of de facto officers.** A board may ratify or adopt such acts of officers de facto as the law would permit officers de jure to perform.

10. **Qualification of officers.** See section 2758.

11. **Elections—regular.** Sections 2746, 2751, 2754, 2756.

12. **Vacancy—term.** See notes, sections 2745 and 2758.

Sec. 2772. **Temporary officers—course of study—regulations—use of tobacco prohibited.** The board shall appoint a temporary president and secretary, or either of them, in the absence of the regular officers, and shall prescribe a course of study for the schools of the corporation, make rules and regulations for its own government and that of the directors, officers, teachers and pupils, and the care of the schoolhouse, grounds and property of the school corporation, and aid in the enforcement of the same, and require the performance of duty by said persons not in conflict with law and said rules and regulations, and such rules and regulations shall prohibit the use of tobacco in any form by any student of such schools and such board may suspend or expel such student for any violation of such rule. [35 G. A., ch. 241, § 2; C. '73, §§ 1730, 1737; R., § 2037.]

Notes: 1. **Course of study.** The board of every district should adopt a carefully prepared course of study, to which the electors may add other branches. This department recommends and urges that the state course of study which has been published and used for about 25 years be adopted in all the rural schools.

2. **Branches required.** The law does not prescribe clearly the several branches that shall be taught in the public schools, further than to require most teachers to be qualified to teach certain branches enumerated (section 2734-d), and to require pupils of the ages of seven to fourteen to attend some school in which the common branches are taught. Sections 2823-a to 2823-l.

3. **Branches implied.** It is plainly implied that the common branches, including music, are to be included in every course of study. Section 2823-a.

4. **Special branches.** The board of every district shall include manual training, agriculture, domestic science, and may include drawing or any other branch, in the course of study.

5. **Added branches.** It is the province of the electors to decide what branches beside those named by the board shall be included in the course of study and taught in the schools. Section 2749.

6. **Different course for different schools.** If it is desired that higher arithmetic, or any other advanced study, shall be taught in one or more schools in the district, the board should include such branch in the course of study for such school or schools.

7. **Electors may not restrict.** The electors may not limit nor restrict the board as to a course of study. The most that the electors may do is to compel the board to provide for giving instruction in the branches ordered by the electors to be taught during the year. 44 Iowa, 564.

8. **Rhetorical and graduating exercises.** The board of directors may adopt rhetorical exercises as a part of the course of study, and teachers and scholars will be governed thereby. Graduating exercises are a part of the course of study and the board may direct what exercises shall be held in connection with the closing days of school.

9. **Classification.** In mixed schools a close classification is very desirable. Time is saved, larger classes are secured, and the efficiency and discipline of the school are promoted by such a plan.

10. **Half-day attendance.** A condition may exist when for a short time a board may be compelled to provide by regulation that certain pupils shall attend only one-half of the day, and others of the same grade the other half. But such arrangement should not be a permanent one.

11. **Equal school facilities.** A board is discharging the duty incumbent upon it to provide equal school facilities for all when it does the very best possible to overcome difficulties, and leaves nothing undone which it might properly be expected to do.

12. **Board as managers.** Legally speaking, the management of the schools in every essential respect is entirely within the control of the board. Teachers and scholars are governed by the reasonable rules and regulations adopted by the board. In the absence of a rule upon any special subject the action of a teacher is supposed to be in effect the act of the board until such action is set aside or disclaimed by an order of the board directing otherwise. Decisions, 17, 33, sections 2745, 2782.

13. **Control of property.** Each board has exclusive control of the schoolhouses in its district, unless the school township meeting has otherwise ordered. Sections 2745, 2782, 2749.

14. **Trespassing.** In an extreme case it may be necessary to bring an action in the name of the state before a peace officer against any person or persons wilfully or unlawfully persisting in trespassing upon the schoolhouse grounds or wilfully interfering with or distributing the quiet and uninterrupted progress of a public school. See note 22.

15. **Entering unoccupied schoolhouses.** If any tramp or vagrant, without permission, enter any schoolhouse or other public building in the nighttime, when the same is not occupied by another or others having proper authority to be there, or, having entered the same in the daytime, remain in the same at night when not occupied as aforesaid, or at any time commit any nuisance, use, misuse, destroy or partially destroy any private or public property therein, he shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. Code, section 4793.

16. **Security for use.** The board should require from parties desiring to use the schoolhouse, security for its proper use and protection from other injury than natural wear.

17. **Use—public worship.** It is proper to permit the use of schoolhouses for the purpose of public worship on Sunday, or for religious services, public lectures on moral or scientific subjects, or meetings on questions of public interest, on the evenings of the week, or at any time when such use will not interfere with the regular progress of the school. Especially is this so where abundant provision is made for securing any damages which the taxpayer may suffer by reason of the use for the purposes named. The use of a schoolhouse for such purposes, when so authorized, is not prohibited by section 3, article 1, of the constitution. 35 Iowa, 194; 50 Iowa, 11.

18. **Charge for admission.** It is not in accordance with the meaning of the law and the decisions of the courts to allow a schoolhouse to be used for a purpose requiring an admission fee. This does not prevent a contribution being taken up, but we think free admission should not be denied.

19. **None excluded.** It is believed that no discrimination should be made as to who may attend meetings held in a schoolhouse. To make membership in a particular society a test for attendance upon the meeting would seem to be in conflict with the intention of the law.

20. **Voting place.** In precincts outside of cities and towns the election shall be, if practicable, held in the public school building, for the use of which there shall be no charge, but all damage to the building or furniture shall be paid by the county. Code, section 1113.

21. **Defacing.** If any person wilfully write, make marks or draw characters on the walls or any other part of any church, college, academy, schoolhouse, courthouse or other public building, or on any furniture, apparatus or fixtures therein; or wilfully injure or deface the same, or any wall or fence inclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. Code, section 4802.

22. **Disturbing school.** If any person wilfully disturb any assembly of persons met for religious worship by profane discourse or rude and indecent behavior, or by making a noise, either within the place of worship or so near as to disturb the order and solemnity of the assembly, or if any person wilfully disturb or interrupt any school, school meeting, teachers' institute, lyceum, literary society or other lawful assembly of persons, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars. Section 4959.

23. **Rules adopted by boards—interference.** A rule adopted by a school board for the government of the school will not be interfered with by the courts unless it is so unreasonable as to amount to an abuse of power. 129 Iowa, 441.

24. **Violation of rules.** The determination by a school board that a rule which it had power to make for the government of the school had been violated will not be reviewed by the courts. 129 Iowa, 441.

25. **Special classes.** The parent cannot expect that a class shall be formed whenever asked for at any time in the school year, for the special accommodation of one or more to the disadvantage of the many and to the detriment of the school. Section 2772.

26. **Classification necessary.** It is quite necessary to carry out carefully a close plan of classification and instruction, and to provide what time in the year certain classes shall begin the study of the branches to be taught during that portion of the year. To this end this department recommends and urges the adoption of the state course of study in all ungraded schools.

27. **Beginners.** Authority to prescribe the courses of study confers the power to determine when classes in any subject may be organized. Under this authority, school boards may determine when beginning classes in primary work shall be organized.

28. **Admission of beginners.** All persons of the ages of five to twenty-one who are actual residents of a school corporation may attend some school in said corporation, provided they are able to be classified under the course of study and rules prescribed by the board. Those who have never attended school, or who have not received sufficient instruction to enable them to take the work of some class already organized, may demand admission only when a beginning class is organized.

29. **Branches completed before promotion.** It is within the power of a board to require the study of the common branches, or of other elementary studies that are in the course of study adopted by the board, before advancing the scholar to other more difficult subjects.

30. **Attendance denied.** If a child becomes the source of undue annoyance to others, although through no fault of his own, he may, if absolutely necessary for the good of the school, be forbidden attendance. 31 Iowa, 562, top of page 569. Section 2782.

31. **Purpose of the law.** On the other hand the spirit of our laws does not support an interference with personal or individual rights except when such control or restriction may become absolutely necessary in order to protect others in the enjoyment of the rights guaranteed to them by the law. The true idea is to bring all of school age within the salutary influence of the school and to keep them there if possible.

32. **Control of pupil.** Undoubtedly the parent and teacher have joint control over the scholar on his way to and from school. The pupil becomes subject to the control of the board as soon as he leaves home for school and continues within such control until he again reaches the home of the parent. It is very desirable that co-operation and a mutual desire to promote the best good of the scholar should be sought by the parents and the school authorities. 129 Iowa, 441.

33. **Teacher to determine subjects.** It is the duty of the teacher, under the direction of the board, to determine what branches can best be pursued by each scholar. Section 2772.

34. **Branches understood in course.** Without special mention in the teacher's contract, it is understood that only the usual common branches and those included in the course of study for the school are expected to be taught. Section 2778.

35. **Subjects must be included.** If it is desired that higher arithmetic or any other advanced study, shall be taught in one or more schools in the district, the board should include such branch in the course of study for such school or schools, and require the teacher to obtain a valid certificate in such branch before beginning school. Sections 2749, 2772.

36. **Subjects not in course.** It is not within the province of individual persons to demand instruction outside the branches in the course of study.

37. **Music and physiology mandatory.** Every scholar must study music, physiology and hygiene, including the effects of stimulants and narcotics, until the outline upon that branch, as prepared by the board, has been completed. Section 2823-s, 2775.

38. **Follow course.** It becomes the duty of every teacher to follow the plan of work indicated in the course of study. When difficulties are met, if no other person has general supervision, the matter may be brought to the attention of the board. Section 2772.

39. **Board has control of classification.** As regards classification, the board has absolute control. But as the teacher is by common consent presumed to know what will be best for all, custom has left to him the making of the program and the placing of scholars in the proper classes. Section 2772.

40. **When not entitled to promotion.** If a scholar is found to be so deficient in the common branches that he is unable to take the work in a class more advanced, without detriment to the class and to himself, it is plain that he may be classified in each branch where he is likely to receive the greatest good. The penalty for not pursuing a suitable course of study will be found in the fact that such scholars may be denied promotion, and may not be allowed to graduate.

41. **Aids and apparatus.** In connection with the course of study, the board should designate the teaching helps and apparatus to be used, and should also arrange to furnish such appliances as soon as they are needed.

42. **Compulsory attendance.** Sections 2823-a to 2823-i.

43. **Power to make a rule—how determined.** While the review of the action of a school board with reference to a matter within its jurisdiction is by

appeal to the county superintendent, yet the question as to whether the board had power to make the rule can be reviewed by the court in a mandamus proceeding 129 Iowa, 441.

44. **Expulsion of scholar—dismissal of teacher—enforcement of regulations.** Section 2782.

45. **Use of tobacco.** School boards must make regulations governing the use of tobacco on the part of pupils. They may regulate its use on the playground or at other times.

Sec. 2773. **Schoolhouse site—division of district—length of school.** It may fix the site for each schoolhouse, taking into consideration the geographical position, number and convenience of the scholars, provide for the fencing of schoolhouse sites, determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law. Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years, and each school regularly established shall continue for at least twenty-four weeks of five school days each, in each school year commencing the first day of July, unless the county superintendent shall authorize the board to shorten the period in any one or more schools, when in his judgment there are sufficient reasons for so doing. No school shall be in session during the time of holding a teachers' institute except by written permission of the county superintendent. [31 G. G., ch. 136, § 8; 19 G. A., ch. 172, § 21; 17 G. A., ch. 54; 15 G. A., ch. 57; C. '73, §§ 1724, 1727, 1769; R., §§ 2023, 2037.]

Notes: 1. **Power to locate school site.** The power to locate site for schoolhouses is vested originally, exclusively in the board. This authority should be exercised with great care and without prejudice. The electors may not definitely limit a board by vote or instructions. If, however, taxes or bonds have been voted to build upon a particular site, the board may not disregard such vote. 100 Iowa, 317. Decisions, 20, 27, 34. 135 Iowa, 95.

2. **Change of site.** The directors of a school township have the power under code, section 2773, to change the site of a schoolhouse without authority by vote of the electors of the district. 123 Iowa, 199; 135 Iowa, 95.

3. **Expediency of removal.** The expediency of removal cannot be considered upon an application for injunction; nor will the action of the board be considered on a simple allegation that it was surreptitiously taken in the absence of a statement of facts upon which the complaint was based. 123 Iowa, 199. See also Kinney v. Howard, 133 Iowa, 94.

4. **Removal of schoolhouse.** The removal of a schoolhouse to another site within the same subdistrict is entirely within the control of the board, and a vote of either the electors of the subdistrict or of the school township will be only suggestive. 81 Iowa, 335.

5. **Wishes of electors considered.** The wishes of the people, for whom the house is designed, should be consulted as far as practicable, taking into account prospective as well as present needs of all the people of the district. Decisions, 20 and 24.

6. **Reasonable distance.** There is nothing in the law fixing a standard as to what is to be considered a reasonable distance for children to travel to school. Attendance in an adjoining district under such circumstances as to secure the payment of tuition to the adjoining district is governed by the provisions of section 2803. Decisions, 82.

7. **Removal of schoolhouse from subdistrict.** The removal of a schoolhouse from the subdistrict must be first ordered by the electors, at the township meeting. Decisions, 15.

8. **Site on highway.** There are many obvious reasons why a schoolhouse site should not be located away from the highway. It is highly desirable that the necessary highways to a new site should be open before a schoolhouse is placed upon such site.

9. **Suggestive votes not mandatory.** A vote of the electors upon matters which by the law are to be determined by the board, is not binding upon the board, but is only suggestive to it. In such matters the board will still be left free to exercise the large discretion vested in it by the law. 81 Iowa, 335.

10. **Removal in case of change in district.** As a change of boundaries between subdistricts does not take effect until the organization of the new board elected in March following the change, the board may not move the schoolhouse to accommodate the proposed new conditions until after that time.

11. **Should own sites.** If possible, the district should own the sites. A perfect title should be secured, and the warranty deed recorded, before commencing to build. The property should be conveyed to the district in its corporate name. The deed should be recorded and afterwards filed with the president.

12. **Objections to location.** In selecting the site of a schoolhouse the board is controlled by the provision of code section 2814 as to the acquisition of a site within thirty rods of the residence of an owner who objects to such location. *Mendenhall v. Board of Directors*, 137 Iowa, 554.

13. **County superintendent's decision final if not appealed.** The action of the board of directors in fixing a new schoolhouse site is subject to the review of the county superintendent; and if the action of the board is reversed on such appeal the district has no longer authority to hold or use the site purchased for the purpose, and a conveyance of property for such new site becomes invalid and inoperative without any action for rescission on the part of the board. *Ind. School Dist. v. McClure*, 136 Iowa, 122.

14. **Abstract.** The title to property which school boards acquire is subject to the reversal of the action of the board. 135 Iowa, 122. In purchasing the grounds for schoolhouse purposes the president should require an abstract of title and satisfy himself that the property is free from incumbrance.

15. **Public square as site.** A public square, of a town located wholly within an independent district, may be transferred to such district for school purposes. Code, sections 931, 932.

16. **Size of rural site.** A rural site should contain not less than one acre of ground, ordinarily, and this exclusive of highway. In consolidated corporations (section 2794-a) and school townships owning but two sites, not to exceed four acres may be acquired. Section 2814.

17. **When section 2814 does not apply.** The provisions of section 2814 do not apply when the site is purchased.

18. **Number necessary.** The law does not provide the number to be accommodated by a new house in order that one may be built. Decisions, 45.

19. **More than one schoolhouse.** There is nothing in law to prevent the erection of more than one schoolhouse in a subdistrict. 69 Iowa, 533. Decisions, 45.

20. **Fencing school site—mandatory.** Sections 2745-a and 2745-b.

21. **Lawful fence.** Section 2367 of the code defines a lawful fence. The same section provides that a partition fence may be made tight by the party desiring it.

22. **Fence viewers.** Any question upon which there is a difference of opinion between parties should be submitted to the township trustees, who act as fence viewers, and determine matters in controversy. Section 2367.

23. **No holidays.** There are no holidays during which teachers are exempted by the law from teaching, unless excused by the board. A legal contract requires twenty days of actual service for a month.

24. **Legal holidays.** In this state, by common consent and universal custom, New Year's Day, Memorial Day, Fourth of July, Labor Day, Christmas and any day recommended by the governor or the president as a day of thanksgiving. are observed as holidays.

25. **Board may allow holidays.** It is the commendable custom with very many boards to allow teachers and scholars the so-called holidays, and to pay the teacher as if those days had been taught.

26. **Visiting other schools.** There is no provision of law giving teachers time to visit other schools. Boards often grant teachers this privilege, under proper restrictions.

27. **Teaching on Saturday.** By consent of the board, an occasional Saturday may be taught. But as five days are a school week, the practice is not to be commended.

28. **Effect of custom.** If no action has been taken by the board and the contract contains no provision relating to the matter, the custom prevailing in that school will probably govern as to the matter of beginning and closing school sessions, intermissions, and other like particulars. It is well for the board and the teacher to have an agreement in matters of this kind.

29. **School day—length.** While the written law does not specify the length of a school day, almost universal custom has made it six hours. The board has the power to shorten or lengthen this time somewhat if thought best. If no action has been taken by the board, and a contract contains no provision relating to the matter, the custom prevailing in the district will probably govern.

30. **Night school—extra compensation.** It is within the power of the board to maintain a night school. No person may receive pay from the funds of the district for giving instruction outside of the school hours fixed by the board nor for teaching without a certificate. Section 2788.

31. **Number months of school.** As regards the length of time during which schools are to be taught, twenty-four weeks is the minimum. Above this it is entirely within the discretion of the board to determine the number of months of school, the time when schools begin, the length of term, and the time and length of vacations. The maximum is unlimited, except as by section 2806, limiting the amount of taxes for contingent and teachers' fund.

32. **Amount of school.** The regular schools of the district should be kept in session an equal number of months, unless the time is shortened or the school closed with the consent of the county superintendent. 47 Iowa, 11.

33. **Attendance—how determined.** Attendance is not necessarily governed by subdistrict lines. Usually and naturally in school townships the subdistrict will form a suitable division for attendance. The board may determine what school in the township children shall attend, without regard to the boundaries of subdistricts.

34. **Subdistrict—voting.** Subdistrict lines determine who may vote for director of the subdistrict, and also fix the limits of taxation, if the voters of a subdistrict vote a schoolhouse tax upon the subdistrict.

35. **Paupers—attendance tuition.** Poor children, when cared for at the poor-house, shall attend the district school for the district in which such house is situated, and a ratable proportion of the cost of the school, based upon the attendance of such poor children to the total number of days' attendance thereat, shall be paid by the county into the treasury of such school district, and charged as part of the expense of supporting the poor-house. Code, section 2249.

36. **Board must provide school.** If a board does not maintain a school and does not secure the release from the county superintendent, then any one legally interested may apply to a court for a writ to compel the board to perform its duty in the matter and to supply school privileges.

37. **More than one school.** The board may establish more than one school when necessary for the accommodation of the children, subject to the limitations in section 2806. An additional school in a rented room continues during such time as the board may determine. Section 2774.

38. **Salary determined by needs.** Inequalities in the requirements may demand that varying prices should be paid as wages for different schools. Decisions, 24.

39. **School year.** The school year for school purposes should be regarded as beginning on the first day of July. The year for the reports closes June 30th. Sections 2757, 2765, 2769.

40. **Who entitled to school—color.** All the youth of the state from five to twenty-one years of age, irrespective of religion, race or nationality, are entitled to the same school facilities. While schools may be graded according to the proficiency of pupils, no discrimination, such, for instance, as requiring colored pupils to attend separate schools, can be enforced. 24 Iowa, 266; 41 Iowa, 689.

41. **Legal residence.** The legal residence of a minor is the same as that of his parents unless they by proper legal process relinquished their rights to the control of said minor. Decisions, 136.

42. The opening of a school is purely a discretionary power of the board. The number of children residing in a district is not necessarily a determining factor in reopening a school. Decisons, 111.

43. School boards have power to choose a new schoolhouse site after bonds have been voted even though the district owns an old site, provided the bond issue was not voted to expend the money on the old location. Decisions, 119.

Sec. 2774. **Renting room—instruction in other schools—transportation of children.** It may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse; and when the board is released from its obligation to maintain a school, or when children live at an unreasonable distance from their own school, the board may contract with boards of other school townships or independent districts for the instruction of children thus deprived of school advantages, in any school therein, and the cost thereof shall be paid from the teachers' fund. And when there will be a saving of expense, and children will also thereby secure increased advantages, it may arrange with any person outside the board for the transportation of any child to and from school in the same or in another corporation, and such expenses shall be paid from the contingent fund. [21 G. A., ch. 124; 16 G. A., ch. 109; C. '73, § 1725.]

Notes: 1. **Extra school.** The board cannot provide an extra school for the acccmmodation of a less number than ten persons of school age. The board may, however, provide for their instruction in other school corporations, and may, if necessary, provide for their transportation. Decisions, 97, 109.

2. **Appeal.** From the action of the board with regard to an additional school, an appeal will lie to the county superintendent. If it is clearly shown to the county superintendent that the board abused its discretion in providing or in refusing to provide such a school, he may on appeal reverse its action, and do what the board might have done.

3. **Board may not be paid.** The board of scholars may not be paid by the district.

4. **Consent necessary.** The board, before closing a school, should procure the consent of the county superintendent. Section 2773.

5. **Appeal not mandamus.** The remedy for one aggrieved by the action of a school board is to appeal to the superintendent and not mandamus. 136 Iowa, 573.

6. **Duties of board.** A school board has not exhausted its powers to provide proper school advantages until it has taken full advantage of the law. Decisions, 125.

7. **Transportation.** If the school is closed and children are directed to attend another school in the same corporation, the board is under obligation to pay transportation provided the child is more than one and one-half miles from the school to which he is directed to attend. 152 Iowa, 500.

Sec. 2775. **Instruction as to stimulants, narcotics and poisons.** It shall require all teachers to give and all scholars to receive instruction in physiology and hygiene, which study in every division of the subject shall include the effects upon the human system of alcoholic stimulants, narcotics and poisonous substances. The instruction in this branch shall of its kind be as direct and specific as that given in other essential branches, and each scholar shall be required to complete the part of such study in his class or grade before being advanced to the next higher, and before being credited with having completed the study of the subject. [21 G. A., ch. 1.]

Notes: 1. **Scope.** This study must begin in the lowest primary class. In what grade or class it shall be completed is to be determined by the board.

2. **Methods of instruction.** The first three grades must be instructed orally, as the children are not old enough to use or comprehend a book. But this oral instruction must be outlined as a course, and adopted by each board. The portion assigned to each grade or class should be thoroughly mastered before more advanced work is entered upon. The work will be best accomplished with the older scholars by the use of a suitable text-book, which it is the duty of every board to select and adopt. Many other harmful effects, very properly emphasized in public lectures, are not required to be taught in the class room.

3. **Spirit of Law observed.** Teachers should be careful to give instruction in accordance with the spirit of the law. The law contemplates that the noxious effects upon the system of the user of any of the articles named shall be taught.

4. **Tobacco—use of.** The board shall forbid the use of tobacco on the part of pupils on the school grounds, or elsewhere.. 2732-27.

5. **Total abstinence.** It is not out of place to emphasize the truth that total abstinence is the only sure way to escape the evils arising from the use of alcoholic drinks and tobacco.

6. **Cigarette habit.** The alarming increase of the cigarette habit calls for united and aggressive action in removing from the growing boy as far as we can possibly do so, the temptation and opportunity to purchase tobacco. In this way value will be added to the instruction required to be given in all public schools as to the effects of narcotics. Section 5005.

7. **Co-operate with authorities.** We urge upon all teachers to co-operate with the authorities and with all other persons in creating and fostering a sentiment favoring a rigid enforcement of the law regarding the sale or giving of tobacco to boys. Code, section 5005.

8. **Mandatory.** Every scholar must study physiology and hygiene, including the effects of stimulants and narcotics, until the outline upon that branch, as adopted by the board, has been completed. The law does not mean that a scholar must necessarily study this branch continuously during his entire school life, unless the course of study adopted by the board so provides.

9. **Responsibility of the board.** A board cannot shift the responsibility by simply providing that teachers shall give instruction in this branch. It must provide for instruction in this subject in the course of study and see to it that the work is actually done by teachers as the law requires.

10. **Duty of county superintendent.** County superintendents should know that every teacher is complying fully with this statute, and any teacher failing or refusing to teach as required, may not be permitted to continue in the work of teaching.

11. **Enforcement.** The proper remedy to secure an enforcement of these provisions, as of other mandatory requirements, is application to a court of law for a writ of mandamus. Code, section 4341.

Sec. 2775-a. **Elementary agriculture—domestic science—manual training—instruction—teachers' examination.** The teaching of elementary agriculture, domestic science, and manual training shall, after the first day of July, nineteen hundred fifteen, be required in the public schools of the state; and the state superintendent of public instruction shall prescribe the extent of such instruction in the public schools. And after the date aforesaid elementary agriculture and domestic science or manual training shall be included among the subjects required in the examination of those applicants for teachers' certificates who are required by the provisions of this act to teach agriculture and domestic science. [36 G. A., S. F. 359, § 1; 35 G. A., ch. 248, § 1.]

Sec. 2776. **Higher schools—union schools.** It shall have power to maintain in each district one or more schools of a higher order, for the better instruction of all in the district prepared to pursue such a course of study, and it may establish graded or union schools and determine what branches shall be taught therein, but the course of study shall be subject to the approval of the superintendent of public instruction; and it may select a person who shall have general supervision of the schools in any district subject to the control of the board. [C. '73, § 1726; R. § 2037.]

Notes: 1. **Course of Study.** With its power to establish and maintain graded and higher schools, every board is invested with authority to prescribe a course of study in the different branches to be taught. Section 2772.

2. **Township high school.** A high school, open to the older and more advanced scholars, may be advantageously established at some central point in the school township.

3. **Co-operation.** It is very desirable that boards, county superintendent, and teachers should work together in efforts to classify and harmonize the work to be done in the ungraded schools. Much may be accomplished by concert of action in carrying forward some uniform method of classification and instruction.

4. **Electors may not limit.** The electors may not limit nor restrict the board to the adoption of a course of study including only such branches as the electors may name. Nor may the electors direct that a particular branch, or certain studies, shall not be taught. It is the province of the electors to decide what branches besides those named by the board, shall be included in the course of study and taught in the schools. Secion 2749.

5. **Graded or union school—meaning.** The best use of the term graded or union school is that referring to a group of different schools or rooms containing scholars of varying ages and attainments, but divided by rooms and classes into sections in which each may do the best work and gain for himself the greatest good.

Sec. 2777. **Kindergarten department.** The board may establish within any independent school district, in connection with the common schools, kindergarten departments for the instruction of children, to be paid for in the same manner as other grades and departments. Any

teacher in kindergartens shall hold a certificate from the county superintendent certifying that the holder thereof has been examined upon kindergarten principles and methods, and is qualified to teach in kindergartens. [26 G. A., ch. 38.]

Notes: 1. **Instruction below school age.** It may well be doubted whether the board in any district may provide for the instruction of children below the minimum school age. The constitution of the state does not seem to contemplate that public money shall be used to provide schooling for any below five years of age. Section 2773.

2. **Kind of license necessary.** A teacher in a kindergarten department must be the holder of a kindergarten certificate. No other kind of certificate will authorize one to teach in such a department.

Sec. 2778. **Contracts—election of teachers—employment of teachers in subdistricts.** The board shall carry into effect any instruction from the annual meeting upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law. But the board may authorize any subdirector to employ teachers for the schools in his subdistrict. Contracts with teachers must be in writing, and shall state the length of time the school is to be taught, the compensation per week of five days or month of four weeks, and such other matters as may be agreed upon, signed by the president and teacher, and filed with the secretary before the teacher commences to teach under such contract.

The board of directors of each independent school district of any city, town, village and of each consolidated independent school district shall have the power to employ a superintendent of schools for a term of not to exceed three years, who shall execute the orders and regulations of the board and have such powers and duties as they may prescribe, with such duties and powers as are now or may hereafter be prescribed by the laws of the state, provided, however, that no such contract be made until a superintendent has served at least one year in the position to which it is proposed to elect him for the longer period. [36 G. A., H. F. 27, § 1; 28 G. A., ch. 107, § 1; 22 G. A., ch. 60; C. '73, §§ 1723, 1757; R., §§ 2037, 2055.]

Notes: 1. **Law not unconstitutional.** This statute is not unconstitutional under section 1, Article 1, of the Constitution declaring all men equal and entitled to acquire, possess and protect property, nor under section 6 of the same Article requiring all laws of a general nature to have a uniform operation, and forbidding the granting of special privileges or immunities. *Bopp v. Clark*, 147 N. W., 172.

2. **Duty of board.** The law requires the board to make all contracts necessary to carry out any vote of the district, and the president to sign all contracts made by the board. Section 2759. Decisions, 97.

3. **Erection of schoolhouse.** It is the duty of the board to make contracts for the erection of schoolhouses, when the means have been provided by the electors.

4. **Powers of electors limited.** The electors frequently assume to exercise powers not granted them by the law. They have only such powers as are specifically named in the law.

5. **Vote rescinded.** A vote of the board may be rescinded, if matters have not become involved making such reconsideration impossible, such as the acceptance of a contract under the vote in question, or the filing of an appeal.

6. **Power may not be delegated.** The responsibility of choosing teachers may not be transferred to persons outside the board. They must all be elected by the board, except in school townships wherein the board may at its discretion authorize any subdirector to employ teachers for his subdistrict.

7. **Director as teacher.** If a director desires to teach the school in his own subdistrict, he should first resign as director, because it would not only be unwise but contrary to public policy to permit a board of directors to contract in the name of the district with one of its own number. 78 Iowa, 37.

8. **Duration of contracts.** Our supreme court has held "that an examination of the statutes leads to the inevitable conclusion that the legislature intended such contracts to be limited in duration to the school year as determined by the board of directors." 107 Iowa, 29.

9. **Outgoing board without authority.** The opinion last cited also makes it plain that no board of directors has the right, prior to the election and organization of the new board, to elect and contract with a teacher for the ensuing year.

10. **Opinions on question of contract.** The department of public instruction should not be expected to give any opinion upon questions involving the validity of a contract. Such questions are for the courts.

11. **Compensation of teachers.** The board should grant a compensation to be paid the teacher according to the circumstances and requirements of each school.

12. **Contracts.** The law specifically requires that contracts with teachers must be in writing. Both boards and teachers should see that this requirement is complied with. When a contract has been signed the president should file the original with the secretary before the opening of school. The teacher should retain a duplicate of the contract.

13. **Certificate may not be questioned.** A board may not question nor discredit in any manner a valid certificate held by a teacher, but may demand proof of special attainments desired by it before engaging a teacher.

14. **Contract—what included.** All matters agreed upon should be incorporated into the written contract. The law presumes that the written contract embraces the entire agreement of the parties. 52 Iowa, 130.

15. **Common branches.** Without special mention in the teacher's contract, it is understood that only the usual common branches and others included in the course of study for the school are expected to be taught. If it is desired that other branches shall be taught they should be designated in the contract or indicated in some manner.

16. **Should produce certificate.** The president should require the teacher to produce his certificate, which he should carefully examine before signing the contract.

17. **Contract—damages for breaking.** A teacher not permitted to complete the term according to contract is entitled to damages, the amount of damages being equivalent to the wages lost. 111 Iowa, 20; 110 Iowa, 314.

18. **Added branches.** To the branches adopted by the board, the electors of any district may add such other branches they deem best to have taught. Section 2749.

19. **Non-English speaking pupils.** It is the duty of our school authorities to provide for schools having non-English speaking scholars, the best instruction available, in order that all the children may acquire rapidly a correst use of English, and become acquainted as soon as possible with the spirit and genius of our American institutions.

20. **Relative—employment of.** There is no provision of law to prevent the employment of a relatve of a member of the board as teacher.

21. **Contract in violation of law.** A contract violating the terms of the law is wholly illegal and void, but the persons signing such contract may be held personally for its performance. 37 Iowa, 314.

22. **Discharge of teacher.** The law provides in section 2782 the manner in which a teacher may be discharged, and the board may not attempt to provide any other method of terminating the contract. 82 Iowa, 686; 100 Iowa, 328; 110 Iowa, 313; 111 Iowa, 20.

23. **Oral contract—enforcement of.** Any person interested in having a verbal contract carried into execution may apply to a court for a writ of mandamus to compel the signing of the written contract. In this way all matters in controversy will be brought before a court in such a manner as to secure a speedy and conclusive determination of the different questions involved.

24. **Directors' liability.** Where directors individually signed a contract for apparatus purporting to bind the board of directors and not indicating an assumption of personal liability, held that they were not individually liable thereon and that the school district having through the board of directors accepted and received the benefit of the apparatus was bound by the contract. *Johnson v. School Corporation*, 117 Iowa, 319; 90 N. W., 713.

25. **Vote, not record that binds.** It is the vote of the directors which is binding on the district, and not the record thereof. And where no record of the action of the directors was made it may be proven by oral testimony. *German Ins. Co. v. Independent Sch. Dist.*, 80 Fed., 366.

26. **Employment.** When a contract with a teacher is disregarded by the school board and the teacher is denied the right to perform, the teacher is not required by way of diminution of damages to seek employment in a different grade of the service or in a different locality. *Byrne v. Ind. School Dist.*, 139 Iowa, 618; 117 N. W., 983.

Sec. **2778-a. Minimum teachers' wage—based on certificate grade.** That all teachers in the public schools of this state shall be paid for their services a minimum wage of not less than the amounts hereinafter set forth, all fractions in average grades to be figured at the nearest whole number:

1. Teachers holding a first grade uniform county certificate or higher, shall be paid a daily wage of not less than a sum obtained by multiplying three cents by the general average grade shown on such certificate.

2. Teachers holding a second grade uniform county certificate shall be paid a daily wage of not less than a sum obtained by multiplying two and three-quarters cents by the general average grade shown on such certificate up to and including a general average grade of eighty-five per cent.

3. Teachers holding a third grade uniform county certificate shall be paid a daily wage of not less than a sum obtained by multiplying two and one-half cents by the general average [grade] shown on such certificate.

Provided that a teacher having contracted on a second or third grade certificate in conformity with this act, shall fulfill such contract at the wage fixed at the time of signing same, plus any additional credit earned under section two hereof. [35 G. A., ch. 249, § 1.]

Sec. **2778-b. Credits for attending training school.** Every teacher holding either a second or third grade certificate who has taught successfully for one year and attended an approved teachers' training school for a period of six weeks following, shall, upon proper certification of such attendance, receive a credit of three points in estimating the salary due, and to be paid, but such credit shall not operate to raise the grade of such certificate. [35 G. A., ch. 249, § 2.]

Sec. **2778-c. Contracts for less than minimum wage prohibited.** It shall be unlawful for any school board or any school officer to contract for or pay a less wage to any teacher in the public schools of this state than the minimum amounts herein fixed for the grade certificate held by such public school teacher. But nothing herein shall be construed as limiting the right to make a lawful contract for a higher wage than herein specified as a minimum. [35 G. A., ch. 249, § 3.]

Sec. **2778-d. Violation—penalty.** Any school officer violating the provisions of this act shall be fined a sum of not less than twenty-five dollars, nor more than one hundred dollars, in the discretion of the court, and shall be suspended from office. [35 G. A., ch. 249, § 4.]

Sec. **2779. Erection or repair of schoolhouse.** It shall not erect a schoolhouse without first consulting with the county superintendent as to the most approved plan for such building and securing his approval of the plan submitted, nor shall any schoolhouse be erected or repaired at a cost exceeding three hundred dollars save under an express contract reduced to writing, and upon proposals therefor, invited by advertisement for four weeks in some newspaper published in the county in which the work is to be done, and the contract shall be let to the lowest responsible bidder, bonds with sureties for the faithful performance of the contract being required, but the board may reject any and all bids and advertise for new ones. [C. '73, § 1723; R., § 2037.]

Notes: 1. **Plans—approval of.** Before making a contract great pains should be taken to obtain the best possible plan for the building. On this point the law requires consultation with the county superintendent. The written approval of the plan by the county superintendent should be secured.

2. **Plans and specifications.** In building a schoolhouse, it is important to secure plans of the building, with full specifications as to its dimensions, style of architecture, number and size of windows and doors, quality of materials to be used, what kind of roof, number of coats of paint, of what material the foundation shall be constructed, its depth below and its height above the surface of the ground, the number and style of chimneys and flues, the provisions for ventilation, the number of coats of plastering and style of finish, and all other items in detail that may be deemed necessary. The plans and specifications should be attached to the contract, and the whole filed with the secretary.

3. **Competitive bids.** Contracts for the erection or repair of schoolhouses, or for material for the same, exceeding $300, cannot be entered into until proposals have been published at least twenty-eight days.

4. **Lowest bidder.** The board is sole judge as to what constitutes the lowest responsible bidder. If the contract is regular in other respects, a court would not be likely to interfere, although lower bids in amount were offered and rejected by the board.

5. **Failure to contract—new bids.** In case of failure to close the contract with the bid accepted under an advertisement, if it is desired to make a new attempt to contract, it will be necessary to advertise anew for bids.

6. **Contract—terms of.** Contracts must, in all cases, be made according to the instructions and directions of the board, and after being made they should be reviewed by the board before any work is done.

7. **Accepting work.** When a schoolhouse is built or repaired under contract, the board should not neglect to examine the work carefully in order to determine that the contract has been fully complied with, before it directs the payment of money.

8. **Rights of surety.** The surety has the right to stand upon the terms of the original contract, and any material change therein without his consent, affecting the subject-matter of the contract even to a slight degree, will exonerate him. 50 Iowa, 98.

9. **Amount of surety.** The aggregate amount to which the sureties are required to qualify is double the amount of the bond required. Code, section 358.

10. **A member should not be surety.** As a rule it is unsuitable for a member of the board to become a surety for an officer of the board, or to appear as surety upon any other bond which is to receive the approval of the board.

11. **In violation of law.** Contracts made in violation of the terms of this section are illegal. Their fulfillment may be prevented by injunction.

12. **No partnership.** The district may not form a partnership in building a schoolhouse. But this does not prevent its receiving donations.

13. **Exempted.** District property is exempt from general taxation, from execution, from garnishment, and from mechanic's lien. 51 Iowa, 70.

14. **Tax anticipated.** When a schoolhouse tax has been voted, the board may anticipate its levy and collection and issue orders to build Such orders may not bear a higher rate of interest than six per cent. 50 Iowa, 102.

15. **Condemnation of schoolhouse.** The local board of health has undoubted right to condemn and close for use as a schoolhouse a building unfit for such purpose. Section 2568.

16. **Unappropriated funds—use.** Any unappropriated schoolhouse fund in the district treasury may be used for the erection or repair of schoolhouses, at the discretion of the board, without action of the electors.

17. **Lightning rod.** A lightning rod may be supplied as a part of a new house, and paid for from the schoolhouse fund. 51 Iowa, 432.

18. **School buildings—delegating power.** Under the statute making it the duty of the board of a school township to select the site, adopt the plans for the erection of the schoolhouse. and award the contracts for the building thereof, the board cannot delegate such powers to a committee appointed by it. *Kinney v. Howard*, 133 Iowa, 94. Decisions, 97.

19. **Indebtedness.** Boards should not involve the district in an indebtedness for the erection of schoolhouses by contracts and the issue of orders to exceed the amount voted by the electors, or of available schoolhouse funds.

20. **Transfer of funds.** Unappropriated schoolhouse funds may be disposed of by the electors, under section 2749, for improvements, such as fencing schoolhouse sites, providing wells, etc., or the same may be transferred to either the teachers' or contingent fund, and the board is required to carry out the vote of the electors.

21. **Contracts—damages for noncompliance—defense.** A building contractor who undertakes to erect a building at a certain time of the year, and to do the work in a first class manner, will not be heard to say that defects therein are because of construction at that season. The inclemency of weather in no way relieves him of his contract.

22. **Building contracts—abandonment—completion—architect's certificate—liens.** 125 Iowa, 227; 125 Iowa, 283.

23. **Preventing performance of illegal contract.** 78 Iowa, 37; 107 Iowa, 29; 117 Iowa, 694.

24. **Confirmation of contract.** 7 Iowa, 509; 50 Iowa, 100; 67 Iowa, 164; 116 Iowa, 275; 117 Iowa, 319; *Richards v. School Township of Jackson,* 132 Iowa, 612. See note 10, section 2783.

Sec. 2780. **Allowance of claims—settlements—compensation of officers—treasurer.** It shall audit and allow all just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed; it shall from time to time examine the accounts of the treasurer and make settlements with him; shall present at each regular meeting of the electors a full statement of the receipts had and expenditures made since the preceding meeting, with such other information as may be considered important; and shall fix the compensation to be paid the secretary. But no member of the board or treasurer shall receive compensation for official services. [35 G. A., ch. 247, § 1; C. '73, §§ 1732-3, 1738, 1813; R., §§ 2037-8; C. '51, §§ 1146, 1149.]

Notes: 1. **Examine contracts.** It is the duty of the board to examine all contracts for the employment of teachers, the construction of schoolhouses, or for any other purpose, and to see that the stipulations have been complied with, before directing the payment of money thereon.

2. **Pay monthly.** The board may authorize the president and the secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed, but the order for wages for the last month should not be drawn until the report required by this section is filed in the office of the secretary.

3. **Auditing—responsibility.** If the board audits a claim and directs orders drawn, the officers of the board will be warranted in following the direction of the board, unless it is clearly manifest that an attempt is being made to violate a plain provision of law. The responsibility in such a case rests very largely with the board.

4. **Financial statement.** This section contemplates that a full report of the affairs of the district shall be made by the board at each annual meeting of the electors. This work appropriately devolves upon the secretary, unless the board designates otherwise. When practicable the report may be published in a newspaper. See section 2781.

5. **Orders—when void.** An order issued on a claim which has not been audited and allowed is void. 39 Iowa, 490.

6. **Compensation.** Only the secretary may receive compensation for the discharge of duties required by law. The evident intent of the law is that no member of the board or the treasurer may receive pay out of the funds of the district for any work done for the district in any capacity whatever.

7. **Contracts with members.** A court would be likely to hold a contract made with a member of the board, to be in violation of the law, contrary to public policy, and void. 87 Iowa, 81.

8. **Must refuse to become a member.** If a person desires to secure pay from the district there seems to be no other way than for him to refuse to become a member of the board, or if a member, to resign from the board. See notes 6 and 7 above.

9. **Electors may not vote compensation.** It is not within the power of the electors to vote compensation or remuneration of any kind to the members of the board or to officers of the board, for their official services. Nor may the board vote compensation to any member.

10. **Official trust not delegated.** The official trust of a member of the board may not be delegated. It is apparent that as there is no way in which a member may receive compensation for discharging official duties, he may not contract with another person to be paid from the district funds for performing the same services as a substitute for the member of the board. *Kinney v. Howard*, 133 Iowa, 94.

Sec. 2781. **Financial statement.** It shall publish in each independent city or town district two weeks before the annual school election, by one insertion in one or more newspapers, if any are published in such district, or by posting up in writing in not less than three conspicuous places in the district, a detailed and specific statement of the receipts and disbursements of all funds expended for school and building purposes for the year preceding such annual election. And the said board of directors shall also at the same time publish in detail an estimate of the several amounts which, in the judgment of such board, are necessary to maintain the schools in such district for the next succeeding school year. [C. '73, §§ 1734-5, 1756; R., §§ 2037, 2054; C. '51, § 1147.]

Notes: 1. **Statement.** This statement should show in detail the receipts and expenditures for each fund, followed by an estimate of the amount required for each fund, to maintain the schools for the ensuing year.

2. **Items.** The detailed and specific statement for the receipts and disbursements of all funds expended, should be sufficiently itemized to show the amount received from each separate source, and the amount expended for each particular purpose.

3. **Purpose.** This statement is for the information of the electors, but they should not vote upon the amount of tax to be levied for contingent and teachers' funds, as these amounts are determined by the board. Section 2806.

4. **Publication.** The board must have the statement published at least once in a newspaper, if one is printed in the district or have it posted in at least three public places. This publication should be made two weeks before the annual school election.

5. **Expense.** The fee for printing the statement is fixed by law. Code, section 1293.

6. **Minute details.** In preparing the annual statement for publication minute details of all the items need not be given. This would render it uselessly troublesome to prepare, and expensive to publish. Such general results and classified items as will enable the electors fully to comprehend the proceedings of the board, are all that the law requires. The statistics of the school may be added if the board thinks proper, but the law does not require it.

Sec. 2782. **Visiting schools—regulations—discharge of teacher—expulsion of scholar.** It shall provide for visiting the schools of the district by one or more of its members and aid the teachers in the government thereof, and enforcing the rules and regulations of the board. It may, by a majority vote discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make

defense, allowing him a reasonable time therefor. It may by a majority vote expel any scholar from school for immorality or for a violation of the regulations or rules established by the board, or when the presence of the scholar is detrimental to the best interests of the school, and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writing to the president of the board. When a scholar is dismissed by the teacher, principal or superintendent, as above provided, he may be re-admitted by such teacher, principal or superintendent, but when expelled by the board he may be re-admitted only by the board or in the manner prescribed by it. [C. '73, §§ 1734-5; R., §§ 2037, 2054; C. '51, § 1147.]

Notes: 1. **Visitation.** A conscientious compliance with the requirements regarding visitation would greatly increase the efficiency of the schools. There are very many things that may be best ascertained by visiting the school, inspecting the work of the pupils, and conversing with the teacher. The teacher can accomplish the best results only when he is sure of hearty co-operation and support.

2. **Power of board.** Boards have entire control over the public schools of their district and the teachers employed therein. Sections 2745, 2772.

3. **Rules and regulations.** Rules and regulations governing teachers and scholars may be adopted and enforced by the board, as the best interests of the schools may seem to require. Decisions, 17 and 33. See notes 23 and 24, section 2772.

4. **Termination of force of regulations.** The force and effect of any motion adopted by the board does not terminate with a change of officers or members, but remains in force until repealed. 35 Iowa, 361.

5. **Teacher as agent of the board.** The teacher is the agent of the board, and rules made by him and enforced with either formal or tacit consent are in effect the rules of the board.

6. **Jurisdiction of principal.** If it is understood that the principal of a school has charge of other rooms besides his own, he has the same power in managing the children that is by law given to other teachers. Section 2776.

7. **Privilege of the public schools conferred by statute.** The privilege of free instruction in the public schools is one conferred by legislative enactment, under constitutional direction, and the privilege is subject to legislative regulation. The right to attend school is not absolute, but is conditional upon compliance with the rules and the essential conditions. Section 2773.

8. **Dismissal of pupils.** A teacher may dismiss a pupil temporarily. Final disposal of the case, however, rests with the school board.

9. **Responsibility of teacher.** The teacher may be held responsible for the efficient discharge of every duty properly attached to his office, including the exercise of due diligence in the oversight and preservation of school buildings, grounds, furniture, apparatus, and other school property, as well as the more prominent work of instruction and government.

10. **Damage—liability of teacher.** Parties doing damage to school property are responsible for the same. The teacher is bound to exercise reasonable care to protect and preserve school property, and failing to do so may be held liable for damages. Sections 2772-2778.

11. **Corporal punishment permitted.** If the rules and regulations of the board do not provide otherwise the teacher has the right in proper cases to inflict corporal punishment upon refractory scholars. In the proper exer-

cise of his authority, to maintain good order, and to require of all the scholars a faithful performance of their duties, the teacher is entitled to the support and co-operation of the board.

12. **Kind of punishment.** In the choice of a kind of punishment and in the selection of an instrument, as well as in determining the degree of punishment to be administered, the teacher must exercise a sound discretion.

13. **Punishment—a last resort.** Corporal punishment is best reserved as a last resort and should be used only when it is believed that no other gentler measure will secure the reformation of the offender. Dismissal from school by the proper authority is a still more extreme remedy than corporal punishment. 45 Iowa, 248.

14. **Schoolhouses—condition of.** It is the duty of the board to see that schoolhouses are kept in repair, clean, and in good order for school use. Neither the teacher nor the scholars should be expected to scrub or wash out the schoolhouse. The light sweeping of daily use is often done by them on their own motion, but this cannot be required of the scholars, nor of the teacher unless he contracts to take special care of the house in such respects.

15. **Cleaning schoolhouse.** The board should have the schoolhouse cleaned as frequently as it needs such attention in order to keep it in good order for school use. No member of the board may receive pay for such work, but any other person may be paid from the contingent fund.

16. **Janitor—teachers—pupils.** Janitor work cannot be required of the teacher unless an agreement to do the same has been made a part of the contract, and neither the teacher nor the board may require that such work shall be done by the pupils. If a scholar has made unnecessary litter in the schoolroom or about his seat he may be required as a punishment to sweep up the same. But this is quite another matter than doing the ordinary janitor work.

17. **Janitor work—contract.** Making fires and sweeping the schoolroom are not, properly, a part of the teacher's duties. In rural districts teachers frequently perform this labor as a matter of convenience and economy. Those unwilling to do this work, or who expect to receive pay for it, should so stipulate when entering into the contract to teach. Section 2778. Decisions, 28.

18. **Holidays.** It is lawful and quite usual for a board to give teachers holidays and make no deduction from their wages. The teacher, however, may not claim it as a right.

19. **Teacher entitled to compensation.** If a teacher is at the schoolhouse at the proper time, and remains during school hours, he is entitled to pay therefor, according to his contract, whether scholars are present or not.

20. **Epidemic—closing school.** As a rule it is highly undesirable to close a school on account of an epidemic but if the local board of health or the board of directors, closes a school on account of the presence of a contagious disease, or for like reason, the teacher is entitled to pay for such time according to his contract.

21. **Damages for closing.** When a school is closed for a short time, for causes beyond the control of the teacher, the courts will be likely to hold that the teacher is entitled to his pay according to the terms of his contract. Such cases are best settled by compromise between the parties. Note 16, section 2778.

22. **Closing—loss made good.** If the schoolhouse is destroyed, or the school is closed indefinitely by causes beyond the control of either party to the contract, the teacher being ready to comply with his part, can collect pay according to contract. If said teacher uses proper diligence to secure employment at something which he can do, and secures such employment, the district will pay him the difference between the amount received in his new work and the amount of his wages under the contract. In other words, his actual loss should be made good. Opinion of attorney general.

23. **Duty to teachers.** Teachers are entitled to the support and co-operation of the board. It is alike due to the dignity of the board and the rights of the teacher that no one should be discharged except after thorough investigation and the clearest proof. If possible the teacher should be shielded from the stigma of discharge.

24. **Dismissal of teacher—how.** In the trial of a teacher, when it is sought to dismiss him, all the provisions of law must be strictly complied with. The board must allow the teacher to make a full defense, and the teacher may appear by attorney or otherwise, as he chooses. Decisions, 89.

25. **Dismissal of teacher—for what.** Boards may dismiss teachers only for good cause shown. In case the board passes an order to dismiss, the material reason therefor should be spread upon the record, for, while in case of contest, these reasons would not be conclusive against the teacher, the board would be estopped from presenting other reasons than those named in the record. Decisions, 73, 102.

26. **Discharge of teacher—tender of new place.** The tender of a new place is no defense where it did not appear that plaintiff could have accepted such new position without modifying the original contract. 110 Iowa, 313. 139 Iowa, 618. When it has been fully established that a teacher has been illegally discharged by a school board, he must perform or offer to perform his duties as teacher if he expects to collect salary. *Park v. Independent School District*, 21 N. W., 567.

27. **Board as accuser and judge.** In a trial of charges against a teacher by the board of directors it was not objectionable on the ground that they were accusers rather than judges, and because of their prejudice, since they constitute the only tribunal authorized to try such charges. 113 Iowa, 236.

28. **Tender of resignation—merely an offer.** The tender of a resignation by a teacher, under contract to teach in a certain district, being a mere offer, is not binding on either party to the contract until accepted, and it may be withdrawn at any time before it is acted on by the district board. 111 Iowa, 20.

29. **Retention of resignation not acceptance.** The retention of a tender of resignation does not constitute an acceptance. 111 Iowa, 20.

30. **Abandonment of contract.** The filing of a tender of resignation is not an abandonment of contract. 111 Iowa, 20.

31. **Discharge of teacher.** Accepting a resignation that has been withdrawn is not a discharge as provided under section 2782. 111 Iowa, 20.

32. **Hearing without notice—a nullity—second trial.** 113 Iowa, 236. See also 52 Iowa, 587.

33. **Refusal of board to reinstate immaterial.** 113 Iowa, 236.

34. **Date of hearing delayed by injunction.** 113 Iowa, 236. See also 110 Iowa, 652.

35. **Teacher may appeal.** When a teacher is unjustly dismissed, an appeal may be taken from the action of the board in dismissing him, but a suit at law must be brought, if he seeks to recover his pay upon the contract. The teacher should be paid only to the date of legal dismissal. 53 Iowa, 585; 100 Iowa, 328.

36. **Action of board—weight of.** The order of the board discharging or refusing to discharge a teacher is more largely a discretionary than a judicial act. In this, as in other matters, the very large discretionary powers of the board must be respected, and on appeal their conclusion may not be questioned without the most convincing testimony.

37. **Contract terminated by discharge.** The contract with the teacher may be terminated by discharge after the investigation provided for in this section, by revocation of certificate, or by mutual agreement between the parties

38. **Teacher—habits of.** By universal consent, and certainly by the spirit of our school law, it is expected of teachers that they refrain from improper language, keep the Sabbath day with respect, and in every other way avoid practice and company that are demoralizing in their tendencies.

39. **Dismissal—the only method.** This section provides the only manner in which a teacher may be discharged, and the parties to the contract should not attempt to provide any other method of terminating the contract. A discharge by any other method is illegal. 82 Iowa, 686.

40. **Certificate—attack of.** The certificate being in the nature of a commission cannot be attacked collaterally.

41. **Obligations—reciprocal.** The obligations between the parties to a contract to teach are reciprocal. A teacher would have good cause to complain if a board desired to remove him because it had an opportunity to secure a better teacher. Yet in such case if an agreement can be made, annulling the contract, such arrangement would be legal. But the teacher may insist that the board keep its part of the contract in the same spirit that he intends to keep his part. The same is true if it is the teacher who desires to have the contract annulled.

42. **Vaccination.** The regulations of the state board of health require every person entering any public school to give satisfactory evidence of protection by vaccination. Boards of directors and local boards of health also have the power to require all persons who desire to attend the public schools to furnish evidence of successful vaccination.

43. **Exclude children—when.** The board should exclude children coming from houses where there are contagious diseases, and may enforce the rule that children not vaccinated shall not be admitted until they conform to the regulation demanding such protection.

44. **Government of schools.** The board has full control in all matters relating to the government and welfare of the schools. A scholar subject to fits or spasms may be excluded from school by the majority of the board, if the presence of such scholar is thought to interfere materially with the progress of the school. Any one aggrieved by the exclusion of such scholar has the remedy to appeal to the county superintendent. See note 8, section 2804.

45. **Comply and co-operate with board of health.** It is the duty of every board of directors to co-operate with the local board of health in encouraging the vaccination of all school children not already protected by vaccination. The board of directors may compel vaccination, and the majority vote of the board will exclude from the schools any one who will not comply with such reasonable rule of the board of health.

46. **When parents object.** The board will be justified in refusing to permit the attendance of a child whose parent will not consent that the scholar shall obey the rules of the school. 31 Iowa, 562, and 50 Iowa, 145.

47. **Right to attend.** The right to attend school is not absolute, but is conditional upon compliance with the rules and regulations of the board.

48. **Board may not adopt rule.** A board may not adopt a rule which will deprive a child of school privileges, except as punishment for breach of discipline or an offense against good morals. 56 Iowa, 476.

49. **Reasonable and proper rule defined.** Any rule of the school, not subversive of the rights of the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper. 31 Iowa, 562.

50. **Absent or tardy—rules concerning.** It is competent for boards to provide by rules that pupils may be suspended from the schools in case they shall be absent or tardy a certain number of times within a fixed period, except for sickness or other unavoidable cause. 31 Iowa, 562.

51. **Keeping child out of school.** The parent has no right to interfere with the order or progress of the school by detaining his child at home, or by sending him at times that prove an annoyance or hindrance to others. 31 Iowa, 562.

52. **Acts done out of school—jurisdiction of board.** If the effects of acts done out of school hours reach within the schoolroom during school hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. 31 Iowa, 562.

53. **Expulsion of pupil—notice.** The law does not require the board to give a scholar or his parents notice or chance for defense, before ordering his suspension or expulsion. The board has large discretionary powers. This is one of the matters wholly within its discretion. But it would be well for the board carefully to investigate the charges, before dismissing any scholar. Decisions, 33, 93.

54. **Suspension.** Suspension is the separation of the scholar from the school for a limited time, and it may be either for bad conduct, for unnecessary absence or tardiness, or as a sanitary measure. For good cause, a teacher may suspend without fixing the time, notice being also given at once to the board.

55. **Time of suspension should be indicated.** The period of time fixed by the board during which suspension or expulsion shall be in force, should be clearly indicated in the vote of the majority of the board, as spread upon the records. Conditions upon which earlier re-admission is provided for, may very properly be given in the same connection.

56. **When presence detrimental.** The true idea is to bring all within the salutary influence of the school, and to drive none out, but cases sometimes occur in which it becomes necessary for the board to protect the rights of the many by excluding a scholar whose presence and example are a constant menace to the successful progress of the school.

57. **Depriving of recess.** The teacher has control over scholars during school hours, subject to the regulations of the board. He may require a scholar to remain in his seat during recess as a punishment. However, it is not wise to deprive children to any great extent, of the exercise necessary to their physical well-being. If recess is denied it could be given later thus avoiding difficulty.

58. **Control of pupils during intermission.** The teacher has as full control over scholars during recess as at other times within the school hours fixed by the board.

59. **Punishment.** The teacher may for the maintenance of his authority and the enforcement of discipline, legally inflict chastisement upon a pupil. The punishment should, however, be inflicted only for some definite offense which the pupil has committed, and the pupil should be given to understand what he is being punished for. 50 Iowa, 145; 45 Iowa, 248.

60. **Oversight of pupils.** Teachers should exercise watchful care and oversight as regards the conduct and habits of their scholars, not only during school hours, recesses and intermissions, but also within reasonable limits while they are coming to and returning home from school.

61. **Teacher may dismiss.** For good cause, a teacher may dismiss a scholar from school work without fixing the time, and require him to leave the school premises, notice being also at once given to the director or to the president of the board.

62. **Responsibility of teacher.** The teacher is responsible for the discipline of his school, and for the progress and deportment of his scholars. It is his imperative duty to maintain good order and require of all a faithful performance of their duties. If he fails to do so he is unfit for his position. To enable him to discharge these duties effectually, he must necessarily have

the power to enforce prompt obedience to his requests. For this reason the law gives him the power, in proper cases, to inflict punishment upon refractory scholars. Decisions, 17.

63. **Punishment adapted to offense.** In applying correction, the teacher must exercise sound discretion and judgment, and should choose a kind of punishment adapted not only to the offense, but to the offender. Corporal punishment is a severe remedy, and its use should be reserved for the baser faults. Decisions, 17.

64. **Expulsion vs. corporal punishment.** In 50 Iowa, 145, the suggestion is made that expulsion by the board rather than severe corporal punishment by the teacher, is a good remedy in case of repeated and continuous violation of the rules.

65. **Obedience essential.** In the school as in the family there exists on the part of the children the obligation of obedience to lawful commands, subordination, civil deportment, respect for the rights of others, and fidelity to duty. These obligations are inherent in any proper school system, and constitute the common law of the school. Every scholar is presumed to know this law, and be subject to it, whether it has or has not been by the board placed in the form of written rules and regulations.

66. **Power to make a rule—how determined.** See note 43, section 2772.

67. **Course of study—rules and regulations—temporary officers.** See section 2772.

68. **Compulsory attendance.** Sections 2823-a to 2823-i.

69. **Appeal—wrongfulness of discharge determined.** Note 29, section 2818.

70. **Appeal—when necessary.** Note 35, section 2818.

Sec. 2782-a. **Secret societies and fraternities prohibited in schools.** That from and after the passage of this act it shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of any secret fraternity or society wholly or partially formed from the membership of pupils attending any such schools or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the directors of such schools. [33 G. A., ch. 185, § 1.]

Sec. 2782-b. **Enforcement.** The directors of all such schools shall enforce the provisions of section one of this act, and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of section one of this act. [33 G. A., ch. 185, § 2.]

Sec. 2782-c. **Suspension or dismissal.** The directors of such schools shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend, or dismiss any pupil or pupils of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such directors, or a majority of them, such pupil or pupils are guilty of violating any of the pro-

visions of section 1 of this act, or who are guilty of violating any rule, rules or regulations adopted by such directors for the purpose of governing such schools or enforcing section one of this act. [33 G. A., ch. 185, § 3.]

Sec. **2782-d. Rushing or soliciting to join prohibited—jurisdiction —penalty.** It is hereby made a misdemeanor for any person, not a pupil of such schools, to be upon the school grounds, or to enter any school building for the purpose of "rushing" or soliciting, while there, any pupil or pupils of such schools to join any fraternity, society, or association organized outside of said schools. All municipal courts and justice courts in this state shall have jurisdiction of all offenses committed under this section, and all persons found guilty of such offenses shall be fined not less than two dollars nor more than ten dollars, to be paid to the city or village treasurer, when such schools are situated inside of the corporate limits of any city or village, and to the county treasurer, when situated outside of the corporate limits of any such city or village, or upon failure to pay such fine, to be imprisoned for not more than ten days. [33 G. A., ch. 185, § 4.]

Sec. **2783. Use of contingent fund—free text-books.** It may provide and pay out of the contingent fund to insure school property such sum as may be necessary; and may purchase dictionaries, library books including books for the purpose of teaching vocal music, maps, charts and apparatus for the use of the schools thereof to an amount not exceeding twenty-five dollars in any one year for each schoolroom under its charge; and may furnish school books to indigent children when they are likely to be deprived of the proper benefits of school unless so aided; and shall, when directed by a vote of the district, purchase and loan books to scholars, and shall provide by levy of contingent fund therefor. [30 G. A., ch. 115; 26 G. A., ch. 37; 25 G. A., ch. 34; 21 G. A., ch. 107; 19 G. A., ch. 149, § 1; C. '73, § 1729.]

Notes: 1. **Insuring property.** This section confers upon all boards the right to insure school property, and this duty should not be neglected. Insurance of school property may be effected either in a stock or mutual company which is legally authorized to do business in the state. Code, section 1759.

2. **Records and supplies.** Purchase of records, dictionaries, apparatus and similar supplies for the use of the district may not be made by contract under section 2824, but all such articles will be bought under this section. Note 4 to section 2824.

3. **Necessary expenses.** Definite provision should be made by the board for the usual necessary contingent expenses of the schools during the year, before contingent fund is taken to purchase any of the articles named in this section. Section 2768.

4. **Patriotism.** There can be no doubt that one of the purposes of the school is to teach patriotism to the children. It is the duty of school boards to use available contingent funds to purchase a flag to be used as apparatus in the schoolroom, on the school building, or upon the school grounds.

5. **When not in session.** A purchase of apparatus made with the consent of the board when not in session, is a clear violation of the law, but acceptance and retention of the benefits by the district may make it liable under the contract. 117 Iowa, 319; 117 Iowa, 694; 70 Iowa, 320; 13 Iowa, 555.

6. **Liability of members.** Members of boards giving orders for apparatus in their individual capacity assume personal responsibility and may thus render themselves liable for payment as individuals unless it appears that the purchase was for the benefit of the school corporation. 117 Iowa, 319.

7. **Prearrangement not binding.** The members of a school board cannot, by a prearrangement or contract entered into when not in session, bind themselves afterwards to ratify or confirm a contract or engagement thus entered into. The distinction here is that while a board, in session, may ratify a contract made out of session, the members cannot individually bind themselves to do so. 117 Iowa, 319.

8. **Free text books.** These provisions afford all districts the opportunity to supply free books, so that every indigent child may continuously enjoy the privileges of school. It is believed that if districts will take action in accordance with the spirit of the law, the percentage of attendance at school can be materially increased, and the usefulness of our schools to all the children greatly enhanced. See sections 2836, 2837.

9. **Purchase of supplies—warrant—when void.** A warrant executed by the president and secretary of a school board without the authority of the rest of school board, in payment for school supplies contracted for by a majority of the board (when not in session), is void. 117 Iowa, 319; 109 N. W., 1093.

10. **Confirmation of contract.** The defeating of a motion to refuse to accept supplies (order by a majority of the members of the board when not in session) was a confirmation of, and approval of the order. 117 Iowa, 319. See also 116 Iowa, 275; 7 Iowa, 509; 50 Iowa 100; 67 Iowa, 164; 109 N. W., 1093.

11. **Books, maps, apparatus, indebtedness.** Section 2783, code 1897, permits a school board to charge the contingent fund with an indebtedness in excess of the unappropriated money on hand, but the amount may not exceed twenty-five dollars for each regular school. 118 Iowa, 540; 116 Iowa, 275; 117 Iowa, 319.

Sec. 2784. **Water-closets.** It shall give special attention to the matter of convenient water-closets or privies, and provide on every schoolhouse site, not within an independent city or town district, two separate buildings located at the farthest point from the main entrance to the schoolhouse, and as far from each other as may be, and keep them in wholesome condition and good repair. In independent city or town districts, where it is inconvenient or undesirable to erect two separate outhouses, several closets may be included under one roof, and if outside the schoolhouse each shall be separated from the other by a brick wall, double partition, or other solid or continuous barrier, extending from the roof to the bottom of the vault below, and the approaches to the outside doors for the two sexes shall be separated by a substantial close fence not less than seven feet high and thirty feet in length. [25 G. A., ch. 3.]

Notes: 1. **Provisions mandatory.** This provision of the law requiring it to take special pains with regard to outbuildings is mandatory upon every board. A director may not refuse to carry into effect instructions from the board with regard to such a matter. And a board refusing to give attention to the subject risks a censure from a court if its failure or refusal to provide proper facilities as regards privies or water-closets is brought to the attention of a court. See also section 2822.

2. **Defacing public property.** If any person wilfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, schoolhouse, courthouse or other public building, or on any furniture, appartus or fixtures therein; or wilfully injure or deface the same, or any wall or fence enclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. Code, section 4802.

3. **Teacher's duty.** Very much depends upon teachers to determine the manner in which this law is observed. A listless indifference, a half-hearted activity, a want of confidence, will defeat the purpose of the law for the time at least. Serious consideration, a high-minded approbation of its intention, a courageous insistence upon its observance, together with untiring attention and frequent inspection, will make the law a continued success. No conscientious teacher will be irresolute, when the immeasurable interests involved are regarded.

4. **May invoke assistance of peace officers.** Teachers should not hesitate to bring the case of persistent offenders to the attention of the board. As a last resort it may become necessary for the board to invoke the assistance of the peace officers. It sometimes happens that nothing less than a strong arm of the civil authorities is able to compel a respect for law, and a decent regard for the rights of others. No community may justly claim to be a moral people, who knowingly fail to guard and preserve the purity, the morals, and the health, of its children and youth.

Sec. **2785. Duties of director—contracts—enumeration.** The board of directors of a school township may authorize the director of each subdistrict, subject to its regulations, to make contracts for the purchase of fuel, the repairing or furnishing of schoolhouses, and all other matters necessary for the convenience and prosperity of the schools in his subdistrict. Such contracts shall be binding upon the school township only when approved by the president of the board, and must be reported to the board. Each director shall, between the first and fifteenth days of June in each year, prepare a list of the heads of families in his subdistrict, the number and sex of all children of school age, and by the twentieth day of said month report this list to the secretary of the school township, who shall make full record thereof. The powers specified in this section cannot be exercised by individual directors of independent districts. [31 G. A., ch. 136, § 9; C. '73, §§ 1753-5; R., §§ 2052-3; C. '51, §§ 1124, 1142.]

Notes: 1. **Powers—how exercised.** It is a general statement that nearly all the powers of the director are to be exercised under the regulations of the board. Any person about to contract is bound to know what restrictions have been made, and should be governed accordingly.

2. **Director—power of.** The director is clothed with certain general powers by this section, but these are to be exercised under the direction of the board. The board must instruct him, for example, as to the extent of repairs, and prices to be paid for same, and the amount and cost of fuel.

3. **Powers possessed by officers.** School officers are possessed of specially defined powers and should attempt to exercise no others, except such as arise by fair implication from those granted. 110 Iowa, 652.

4. **Director may not contract.** No director has authority to make a contract in behalf of the school township, except under specific instructions of the board.

5. **Approval of contracts.** All contracts made by the director must be approved by the board and signed by the president.

6. **Liability of director.** If a director intentionally violates law he becomes personally liable. 14 Iowa, 510; 17 Iowa, 155; 24 Iowa, 337; and 38 Iowa, 47.

7. **Liability of agent.** If an agent makes a valid contract without authority, he is himself bound thereby. 37 Iowa, 314.

8. **Member may not receive compensation.** It is a violation of law for a board to pay any member of the board for labor as a building committee, for attendance at meetings, or for any other service performed for the district whether official in character or not. Section 2780.

9. **Member may not be employed at compensation.** A member may not be employed by the board to oversee the building of a schoolhouse and receive pay therefor, or to act in any like capacity for which he would be paid from the funds of the district. Such engagement is contrary to public policy and clearly illegal. 78 Iowa, 37, and 87 Iowa, 81.

10. **Approval of contract.** It is the duty of the director to file any contract at once with the president of the board, who should submit the same to the board for approval.

11. **Enumeration record.** A record book containing the enumeration correctly filled out will be of much assistance to the director each year.

12. **Where enumerated.** Minor children at a state institution, or a private school, should be enumerated where their parents or guardians reside.

13. **Failure to enumerate.** The failure of a director to make the report, as required by this section, will reduce the semi-annual apportionments for the year, since they are made upon the enumeration of persons of school age. Section 2808.

14. **Director report.** In school townships the secretary should require the director of each subdistrict to make this report promptly, and should insist that it be made in writing, and certified to be correct. Directors in independent districts do not take the enumeration.

15. **Wilful failure.** A wilful failure or refusal on the part of the director to make the report to the secretary as required may be found by the courts to be a misdemeanor. Code, section 4904, and section 2822.

16. **Duty of secretary.** In case a director fails to make his annual report as required the secretary should at once collect the statistics necessary for a complete report. The board should insist on promptness in preparing this report, and then should give the secretary a suitable compensation for his labors. Sections 2764, 2765.

Sec. **2786. Industrial exposition.** The board of any school corporation or the director of any subdistrict deeming it expedient may, under the direction of the county superintendent, hold and maintain an industrial exposition in connection with the schools of such district, such exposition to consist in the exhibit of useful articles invented, made or raised by the pupils, by sample or otherwise, in any of the departments of mechanics, manufacture, art, science, agriculture and the kitchen, such exposition to be held in the schoolroom, on a school day, as often as once during a term, and not oftener than once a month, at which the pupils participating therein shall be required to explain, demonstrate or present the kind and plan of the articles exhibited, or give its method of culture; and work in these several departments shall be encouraged, and patrons of the school invited to be present at each exhibition. [15 G. A., ch. 64.]

Sec. **2787. Shade trees.** The board of each school corporation shall cause to be set out and properly protected twelve or more shade trees

on each schoolhouse site where such trees are not growing. The county superintendent, in visiting the several schools of his county, shall call the attention of any board neglecting to comply with the requirements of this section to any failure to carry out its provisions. [19 G. A., ch. 23.]

Notes: 1. **Trees should be planted.** Trees should be set out on all schoolhouse sites where good, thrifty shade trees are not already growing, whether such site was secured by purchase, by lease, by gift, or by condemnation under sections 2814, 2816.

2. **Duty of county superintendent.** County superintendents should not fail to call the attention of boards of directors to the provisions of this section. The annual Arbor Day affords a good opportunity for planting trees and otherwise improving the school grounds.

3. **Reporting.** In reporting the number of shade trees on the school site, planted trees only should be reported. Section 2765.

Sec. 2788. **Teacher—qualifications.** No person shall be employed as a teacher in a common school which is to receive its distributive share of the school fund without having a certificate of qualification given by the county superintendent of the county in which the school is situated, or a certificate or diploma issued by some other officer duly authorized by law and no compensation shall be recovered by a teacher for services rendered while without such certificate or diploma. [C. '73, § 1758; R., § 2062.]

Notes: 1. **Certificate necessary.** The teacher must have a certificate during the whole term of school. He is not authorized to teach a single day beyond the period named in his certificate, nor to give instruction in any subject which he does not hold a valid credential to teach. In case of a violation of this section the county superintendent should promptly notify the officers of the board.

2. **Without a certificate.** If a person is teaching without a certificate any one interested in a legal sense may apply to a court for a writ to prevent the board from continuing such instruction, and to restrain the board from paying for the same.

3. **Illinois case.** In an Illinois case a certificate was not obtained until the middle of the term. A new contract was entered into at that time to pay the teacher double wages for the remainder of the term. This was considered an attempt to do indirectly what there was no power to do directly, and therefore the contract was held to be void, as was the original contract.

4. **Supply—payment of.** In case of the temporary absence of the teacher from sickness or other cause, the place should be supplied with some one duly authorized to teach. The supply should be paid by the teacher whose place is filled, unless other provision is made, either by regulation or contract.

5. **Rights of patrons.** In case a person is employed or continued as a teacher in violation of law without a certificate, a resident of the district may sue out a writ of injunction restraining the person from teaching and the district from paying. Boards employing and paying such teachers are liable to prosecution under the provisions of the general statutes for misapplication of funds. Code, section 4904, 4906 and 2822.

Sec. 2789. **Keep register—report.** Each teacher shall keep a daily register which shall correctly exhibit the name or the number of the school, the district and county in which it is located, the day of the week, month, year, and the name, age and attendance of each scholar, and the branches taught; and when scholars reside in different districts separate registers shall be kept for each district, and a certified copy of

the register shall immediately at the close of the school be filed by the teacher in the office of the secretary of the board. The teacher shall file with the county superintendent such reports and in such manner as he may require. [C. '73, §§ 1759-60; R., § 2062.]

Notes: 1. **Necessity of correct record.** Every teacher should take great pains to keep the register required by this section very carefully, in order that the term report may be made out correctly. By doing so the secretary will be able to make his annual report with greater ease, and with added accuracy. All books and blanks necessary for keeping record of attendance and making reports to the board and to the county superintendent must be furnished by the board.

2. **Term report.** The teacher should file a complete and accurate copy of the daily register with the secretary immediately after the close of the term or year. He is not entitled to final settlement until this is done. The secretary should insist on this report before drawing the warrant for the last installment of the wages. Without this report he cannot prepare his annual report as the law directs it to be made. The secretary should carefully examine the report to see whether the record is complete in all respects.

3. **Comply with directions of county superintendent.** It is the duty of every board to see that the teachers comply strictly with all requirements made by the county superintendent, as well as with all rules made by the board. Decisions, 47.

4. **Board may require reports.** It is within the power of the board to require such reports from teachers as seem desirable for the information of the board. It may require reports weekly, monthly, by the term, by the year, or all of these together. It is the duty of teachers to comply with the regulations of the board, so far as it is within the power of the teachers to do so.

5. **All teachers report.** Every teacher in the county may be required to make such reports, agreeing with the spirit of the law, as the county superintendent may request, in such form and at such reasonable time as the county superintendent may determine.

6. **In case of refusal.** The continued refusal to comply with all uniform and reasonable regulations made by the county superintendent, or by the board, on the part of any one employed as a teacher, constitutes good cause for revocation or subsequent refusal of certificate, or for dismissal by the board. Sections 2734-u, .2782.

7. **Non-resident pupils.** The record of attendance of non-resident pupils must be kept separate from that of those residing in the corporation. This does not mean that different books shall be kept.

CORPORATIONS—ORGANIZATION—CHANGE OF BOUNDARIES.

Sec. **2790. New township.** When a new civil township is formed the same shall constitute a school township, which shall go into effect on the first Monday in March following the completed organization of the civil township. The notices of the first meeting shall be given by the county superintendent, and at such meeting a board of three directors shall be chosen. [C. '73, § 1713.]

Notes: 1. **Purpose of the law.** The design of the law is that civil and school township boundaries shall coincide as far as possible. Code, sections 551, 552 and 2743.

2. **When organized.** A new school township is not organized until the month of March after an election of officers for the civil township.

3. **Boundaries of subdistricts.** The boundaries of subdistricts lying wholly within the old or new school townships are not affected by the division of civil townships.

4. **When subdistricts are divided.** When subdistricts are divided by changes in civil township boundaries, the boards should incorporate the several parts with other subdistricts, or otherwise provide for such territory, so that all entitled may vote at the following subdistrict election. In the absence of such action the territory properly belongs to the subdistrict which it adjoins, and the voters should be allowed to vote therein.

Sec. **2791. Attaching territory to adjoining corporation.** In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the county superintendent cannot with reasonable facility attend school in their own corporation, he shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section. [C. '73, § 1797.]

Notes: 1. **Natural obstacles—what constitutes.** The natural obstacle must be a large stream unbridged, an impassable slough, the entire absence of a public highway, or some such natural insurmountable difficulty.

2. **Petition must allege obstacle.** A petition which does not allege the existence of natural obstacles, and where, in fact, no such obstacles exist, is invalid. 62 Iowa, 616; 110 Iowa, 30.

3. **What not obstacles.** Streams well bridged and distance are not natural obstacles in the contemplation of the law.

4. **Jurisdiction of county superintendent.** As the county superintendent has original concurrent jurisdiction, an appeal cannot be taken from refusal by the board to accept the territory. 109 Iowa, 169.

5. **Assets and liabilities.** When the boundaries of districts are changed the territory transferred carries with it a just proportion of all assets and liabilities of the district from which it is taken. Section 2802; 58 Iowa, 77; 110 Iowa, 702.

6. **Attaching territory, natural obstacle.** Acting under section 2791 a division made on petition which does not allege the existence of such obstacles and where, in fact, no such obstacles exist is invalid. 110 Iowa, 30; 109 Iowa, 169.

7. **County superintendent.** The action of the county superintendent as herein provided is essential. *Townsend v. Garrett*, 152 N. W., 565.

Sec. **2792. Restoration.** Where territory has been or may hereafter be set off to an adjoining school township in the same or another county, or attached for school purposes to an independent district so situated, it may be restored to the territory to which it geographically belongs upon the concurrence of the respective boards of directors, and shall be so restored by said boards upon the written application of two-thirds of the electors residing upon the territory so set off or attached, together with a concurrence of the county superintendent and the board of the school corporation which is to receive back the territory. [19 G. A., ch. 160; 18 G. A., ch. 111; C. '73, § 1798.]

Notes: 1. **Two methods.** It will be noticed that two distinct and separate methods are provided by this section.

2. **When take effect.** The restoration may take effect at any time agreed upon, but if no agreement is made, it will take effect the following March. 59 Iowa, 109.

3. **Assets and liabilities.** When the boundaries of districts are changed, the territory transferred carries with it a just proportion of all assets and liabilities of the district from which it is taken. 58 Iowa, 77. Section 2802.

4. **Action on petition—mandamus.** Where the law is mandatory in requiring a board to act upon a petition, the remedy for its refusal to do so is mandamus, and not appeal. 86 Iowa, 669.

5. **How test.** Any conflict between districts with regard to boundaries will be best determined by the one aggrieved asking a court to restrain the county treasurer from paying taxes to the other district, on the ground that the district complaining is entitled to receive said taxes. 100 Iowa, 617.

6. **Restoration of territory.** Code, section 2792, relating to severance (restoration) of territory of an independent school district, applies only to a restoration of territory attached to an independent district after its organization, and not to a portion embraced in the original district. *Albin v. Board of Directors*, 58 Iowa, 77, reversed; 124 Iowa, 213.

7. **Original territory.** This provision has no application to the severance of a portion of the territory originally included in such district. *Williams v. Core*, 124 Iowa, 213, 99 N. W. 732.

Sec. 2793. **Boundary lines changed.** The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings thereafter called for that purpose. The corporation from which territory is detached shall after the change contain not less than four government sections of land, and its boundary lines must conform to the lines of congressional divisions of land. In the same manner, the boundary lines of contiguous school corporations may be so changed that one corporation shall be included in and consolidated with the other as a single corporation. [34 G. A., ch. 142; 31 G. A., ch. 136, § 10; 22 G. A., ch. 62, § 1.]

Notes: 1. **County and township line not a bar.** County and township lines are not a bar to a change of boundaries under section 2793.

2. **New boards necessary.** Whenever a change is made in the boundary between two school corporations, both corporations must elect entire new boards at the next regular annual election. See attorney general, report 1906, page 194. Note 22, section 2802.

3. **Board members—when to take office.** If such change in boundaries occurs between March 1 and July 1, the members in office would act until July 1, when the boards would proceed under new organizations just as though no change in boundaries occurred, until new boards have been regularly elected and duly organized in accordance with the change in boundaries.

Sec. 2793-a. **Corporation limits changed.** When the boundary line between a school township and an independent city or town district is not also the line between civil townships, such boundary may be changed at any time by the concurrence of the boards of directors; but in no case shall a forty-acre tract of land, by the government survey, be divided; and such subdivisions shall be excluded or included as entire forties. The boundaries of the school township or the independent dis-

trict may in the same manner be extended to the line between civil townships, even though by such change one of the districts shall be included within and consolidated with the other as a single district. When the corporate limits of any city or town are extended outside the existing independent district or districts, the boundaries of said independent district or districts shall be also correspondingly extended. But in no case shall the boundaries of an independent district be affected by the reduction of the corporate limits of a city or town. [27 G. A., ch. 89.]

Notes: 1. **Township line a bar.** If the boundary between an independent city or town district and a school township is also the line of a civil township, such boundary may not be changed under authority of section 2793-a, but may be under section 2793.

2. **Extension of corporate limits—effect.** When the corporate limits of a city or town in an independent district are extended beyond the boundary of the school corporation, the boundary of the school corporation is thereby extended, regardless of the effect upon the territory of the adjacent school corporation. See 120 Iowa, 119.

3. **Original incorporation—effects.** The original incorporation as a town of territory embracing parts of several independent school districts has no effect upon the boundaries of the school district, but they continue the same as before the incorporation. 142 Iowa, 8.

4. **New boards necessary.** See notes 2, 3, 4, section 2793, and 22, section 2802.

5. **Tax on new territory.** Property brought into a school district by annexation after the voting and certification of a schoolhouse tax, but before the levy of such tax, is subject to the tax, although the owner was not a resident of the district at the time the election was held. *Grout v. Illingworth*, 131 Iowa, 281; 108 N. W. 528.

6. **Control in hands of voters.** This section is not invalid as delegating to municipal authorities control over the boundaries of a school district, since the actual control is in the hands of the voters and not the municipal authorities. *Wise v. Palmer*, 147 N. W. 167.

Sec. **2794. Formation of independent district.** Upon the written petition of any ten voters of a city, town or village of over one hundred residents, to the board of the school corporation in which the portion of the town plat having the largest number of voters is situated, such board shall establish the boundaries of a proposed independent district, including therein all of the city, town or village, and also such contiguous territory as is authorized by a written petition of a majority of the resident electors of the contiguous territory proposed to be included in said district, in not smaller subdivisions than entire forties of land, in the same or any adjoining school corporations, as may best subserve the convenience of the people for school purposes, and shall give the same notices of a meeting as required in other cases, at which meeting all voters upon the territory included within the contemplated independent district shall be allowed to vote by ballot for or against such separate organization. When it is proposed to include territory outside the town, city or village, the voters residing upon such outside territory shall be entitled to vote separately upon the proposition for the formation of such new district, by presenting a petition of at least twenty-five per cent. of the

voters residing upon such outside territory, and if a majority of the votes so cast is against including such outside territory, then the proposed independent district shall not be formed, provided that a subdistrict containing a village with a population of seventy-five or more, may, under the provisions of this act organize into an independent school district. [36 G. A., H. F. 96, § 1; 29 G. A., ch. 126, § 1; 19 G. A., ch. 118, § 1; 18 G. A., ch. 139; C. '73, §§ 1800-1; R., §§ 2097, 2105.]

Notes: 1. **Where reside.** The one hundred residents must be contained within the limits of the town or village. Additional territory should be secured by the board in forming the new independent school district.

2. **How number determined.** The last official census will, as a general rule, be sufficiently accurate to determine questions relating to the population, but in case of doubt, the actual existing facts govern, which may be ascertained by any reliable means. 77 Iowa, 676. Code, section 177.

3. **Must include.** The contemplated independent school district must include all of the city, town or village, and may include all contiguous territory petitioned for. 110 Iowa, 652. Decisions, 91.

4. **Board must act on petition.** When the required petition is presented the law is mandatory upon the board to establish the boundaries and submit the proposition. 110 Iowa, 652. Decisions, 71, 97.

5. **Determining boundary.** The board may determine the boundaries of the proposed corporation, subject to the following:

(1) All of the town or village must be included;
(2) Territory not described in the petition may not be included;
(3) It is not necessary to include all territory described in the petition. 110 Iowa, 652.

6. **Formation of independent town districts—effect on districts from which territory is taken is immaterial.** A portion of a rural independent district may be included with part of a school township and the new independent district formed under code, section 2794, although there remain in the independent district thus severed less than four sections of land, and in so construing said section it may be necessary to extend its provisions to include independent districts. 120 Iowa, 119. See also *school township of Bloomfield v. Independent District of Castalia*, 112 N. W. 5.

7. **Boundaries—time as an element.** Time does not settle the boundaries of an independent district so that they cannot be changed according to law. 120 Iowa, 119.

8. **Electors determine desirability.** It is for the electors and not the board to determine the desirability or necessity of the independent organization. 110 Iowa, 652.

9. **Conform to congressional divisions.** When the boundaries extend beyond the limits of a town or city, they must conform to lines of congressional divisions of land. Note 9 to section 2801.

10. **Which board.** The board of the school corporation in which a majority of the voters on the town plat reside, must establish the boundaries of said district without the concurrence of any other board, even when said territory is taken from two or more civil townships in the same or adjoining counties. 41 Iowa, 30; 25 Iowa, 305.

11. **Notices.** The notices of the election to determine the question of a separate organization should state clearly the boundaries of the proposed district.

12. **Who vote.** All of the electors residing within the proposed limits must be permitted to vote on the question of separate organization.

13. **Separate ballot.** The electors residing on the territory to be included, but outside of the town or village, are entitled to vote separately on the proposition if they ask such privilege by petition, either to the board or to the judges of the election.

14. **Desirability—determined by.** The desirability or necessity of the independent district is for the people to determine and not the board. 110 Iowa, 652.

15. **Judges.** The president and secretary of the school corporation should act as chairman and secretary of this meeting, and with one of the board, as judges of the election.

16. **Incorporation of town.** The incorporation of a town does not in itself affect the school organization of the district in which the town may be situated. However, it does change the method of choosing the treasurer. See sections 2754 and 2757.

17. **Village—defined.** Town sites platted and unincorporated shall be known as villages. Code, section 638.

18. **Organization.** Section 2795.

19. **Effect upon adjacent corporation.** The fact that the territory of an adjacent rural independent district from which territory is taken is reduced below four governmental sections does not affect the validity of the organization. 120 Iowa, 119.

20. **Concurrence not necessary.** An independent school district may be formed from territory formerly composing two or more independent districts or an independent district and a school township without concurrent action of the boards of the districts out of which the new corporation is formed. 134 Iowa, 349.

21. **Consolidated city districts—organization of consolidated independent districts.** See section 2820-e and 2820-h. See section 2794-a.

22. **Judgment conclusive.** A school township having once litigated to final judgment its rights against an independent district can not relitigate the same rights the simple expedient of bringing into the second action as defendants members of the board of directors who are not necessary parties. 134 Iowa, 349.

23. **Territory outside town.** All territory outside the town is outside territory. 128 N. W., 847.

24. **Appeal the remedy.** A court of equity can not inquire into the justice of boundaries that are fixed by new independent districts. The remedy for a party aggrieved is appeal to the county superintendent. 128 N. W., 847.

25. The addition to the notice of the name of some one, purporting to act as secretary of the board, who was in fact secretary, could not render the notice itself invalid. 153 Iowa, 598.

26. The fact that separate elections were held in each of the territorial divisions proposed to be consolidated instead of a single election in the district to which the petition was presented, as contemplated by statute, did not invalidate the organization of the district, where it appeared that a majority of all the electors so voting were in favor of the organization. 153 Iowa, 598.

27. In organizing a city, town or village independent district, the posting of five notices in accordance with section 2746 is sufficient. 151 Iowa, 497.

CONSOLIDATED INDEPENDENT SCHOOL DISTRICTS.

Sec. **2794-a. Consolidated independent districts—organization— dissolution.** (a) *Organization—petition—election—board of directors.* When a petition describing the boundaries of contiguous territory containing not less than sixteen sections within one or more counties is signed by one third of the electors residing on such territory, and approved by the county superintendent, if of one county, and the superintendent of each if of more than one county, and by the state superintendent of public instruction if the county superintendents do not agree, and filed with the board of the school corporation in which the portion

of the proposed district having the largest number of voters is situated, requesting the establishment of a consolidated independent district, it shall be the duty of said board, within ten days, to call an election in the proposed consolidated district, for which they shall give the same notices as are required in section twenty-seven hundred forty-six of the code, and twenty-seven hundred fifty of the supplement to the code, 1907, at which election all voters residing in the proposed consolidated district shall be entitled to vote by ballot for or against such separate organization. When it is proposed to include in such district a city, or town or village, the voters residing upon the territory outside the incorporated limits of such city, town or village shall vote separately upon the proposition for the creating of such new district. The judges of said election shall provide separate ballot boxes in which shall be deposited the votes cast by the voters from their respective territory, and if a majority of the votes cast by the electors residing either within or without the limits of such city, town or village, is against the proposition to form a consolidated independent corporation, then the proposed corporation shall be formed. If a majority of the votes so cast in each territory shall be in favor of such independent organization, the organization of the proposed consolidated independent school corporation, shall be completed by the election of a board of directors for said school corporation, as provided in section twenty-seven hundred ninety-five of the code, and when so organized shall not be reduced to less than sixteen sections unless dissolved as provided by this act. No school corporation from which territory is taken to form such a consolidated independent corporation shall, after the change, contain less than four government sections which territory shall be contiguous and so situated as to form a suitable corporation. And where after the formation of such consolidated school corporation, whether heretofore or hereafter formed, there is left in any school township one or more sub-districts each of such sub-districts containing four or more government sections, each of such pieces of territory shall thereby become a rural independent school corporation, and it shall be the duty of the officers of the former school township to call an election in each of such rural independent districts for the purpose of electing school officers in the manner provided by law for the election of officers in rural independent school corporations.

(b) *Organization of board—taxes previously certified—levy for general fund.* The organization of the school board in consolidated independent school corporations shall be effected on or before the first day of July following their election, and when completed, all taxes previously certified shall be void so far as the property within the limits of the consolidated independent school corporation is concerned, and the board of said consolidated independent school corporation shall at a regular meeting or a special meeting called for the purpose, at any time prior to the third Monday in August of each year, levy for the general fund of said school the amount of all necessary taxes for all school purposes, which shall not exceed fifty dollars for each person of school age, except that

where an approved high school course is maintained in such school the levy may be sixty dollars for each person of school age the amount so levied to be certified by them to the county board of supervisors on or before the first Monday of September in each year, and the board of supervisors shall levy said tax at the same time, and in the same manner that other school taxes are required to be levied.

(c) *Central school—transportation.* It shall be the duty of the school board of any consolidated independent school corporation and school townships maintaining a central school to provide suitable transportation to and from school, for every child of school age living within said district, and outside the limits of any city, town or village but the board shall not be required to cause the vehicle of transportation to leave the public highway to receive or discharge occupants thereof. The board shall from time to time, by resolution regularly adopted, number and designate the route to be traveled by each conveyance in transporting children to and from school. The school board may require that children living an unreasonable distance from school shall be transported by the parent, or guardian, a distance of not to exceed two miles, to connect with any vehicle of transportation to and from school; or may, in the discretion of the board, contract with an adjoining school corporation for the instruction of any child living an unreasonable distance from school, and they shall allow a reasonable amount of compensation for the transportation of children to and from the point where they are taken over, or discharged from, the vehicle used to convey them to and from school, or for transporting to an adjoining district. In determining what an unreasonable distance would be, consideration shall be given to the number and age of the children, the condition of the roads, and the number of miles to be traveled in going to and from school. The board shall have the right on account of inclemency of the weather to suspend the transportation of any route upon any day or days when in the judgment of the said board it would be a hardship on the children, or when the roads to be traveled are unfit or impassable.

(d) *Contracts for transportation—rules and regulations.* The school board of any consolidated independent school corporation shall contract with as many suitable persons as they deem necessary for the transportation of children of school age to and from school, such contract to be in writing and shall state the number of the route, the length of time contracted for, the compensation to be allowed per week of five school days, or per month of four school weeks, and may provide that two weeks' salary shall be retained by the board pending full compliance therewith by the party contracted with, and shall always provide that any party or parties to said contract and every person in charge of vehicles conveying children to and from school, shall be at all times subject to any rules or regulations said board shall adopt for the protection of the children, or to govern the conduct of the person in charge of said conveyance.

(e) *School building—tax levy—location.* It shall be the duty of the school board of any consolidated independent district to provide a suit-

able school building within such district, and shall at any regular meeting or at a special meeting called for that purpose submit the question of levying a tax for the building of any school building suitable for the needs of the district, or for the repairing of any school building where the cost of such repairs exceeds the sum of two thousand dollars to the qualified voters of said district, and all moneys received from such source to be placed in the schoolhouse fund of said corporation and to be used for such purposes only. In locating said building they shall take into consideration the geographical position, number and convenience of the scholars, and may submit the question of location to the voters of the district at any regular meeting or special meeting called for that purpose; providing that whenever a city, town or village containing a school population of twenty-five or more, is included within any consolidated independent district, then said building shall be located within the incorporated limits of said city, town or village, on such a site as the school board may determine.

(f) *Dissolution—petition—election—boards of directors—division of assets and liabilities.* Whenever a petition signed by one-third of the electors in a consolidated independent school corporation asking that said district be dissolved and describing the boundaries of the district or districts proposed to be organized out of the territory then included in such consolidated independent school corporation and having the approval of the county superintendent, if one county, and the superintendent of each if more than one county, and by the state superintendent of public instruction if the county superintendents do not agree, is filed with the board of said consolidated independent district, it shall be the duty of said board within ten days to call an election for which they shall give the same notices as are required in section twenty-seven hundred forty-six of the code, and twenty-seven hundred fifty of the supplement to the code, 1907, at which election all voters residing within the district shall be allowed to vote by ballot for or against such dissolution. If a majority of all votes cast at said election be in favor of dissolving the consolidated district, same shall be dissolved and the organization of a new district or districts be forthwith completed by the election of a board of directors as provided by statute; provided, however, that such dissolution shall become effective only when the reorganization of the territory included in the original consolidated district is completed. The assets and liabilities of any such school corporation thus dissolved shall be equitably divided as provided in section twenty-eight hundred and two of the supplement to the code, 1907.

(g) *Violation of transportation rules and regulations—penalty.* Any person driving, managing, or in charge of any vehicle used in transporting children to and from school in any consolidated independent school corporation who shall be found guilty of violating any of the rules and regulations adopted by the board of said school for the guidance of any person in charge of such conveyance, shall be guilty of a misdemeanor, and for the first offense shall be fined not less than five

dollars or more than ten dollars and for a subsequent offense shall be fined not less than twenty-five dollars or more than fifty dollars and shall be dismissed from the service. [36 G. A., H. F. 354, § 1; 36 G. A., S. F. 101, § 1; 34 G. A., ch. 143, § 1; 31 G. A., ch. 141.]

1. **Sufficiency of notice.** As to sufficiency of notice of election see *Scofield v. Ferguson*, 151 N. W., 497; *Townsend v. Garrett*, 152 N. W., 565; *Consolidated Dist. v. Martin*, 152 N. W., 623.

2. **Legality of election.** The legality of the election is not affected by the petition calling for the location of the school house at or near a particular locality. *Consolidated Independent School Dist. v. Martin*, 152 N. W., 623.

A sub-district of a school district township is not a "school corporation" within the meaning of the provision requiring that no school corporation from which territory is taken shall, after the change, contain less than four government sections. *Ibid.*

3. **Separate ballot boxes.** The failure to provide separate ballot boxes as provided by Par. (a) of this section was held not to invalidate the election when it was shown that all the votes within the limits of the platted village were in favor of consolidation, and that a large majority of the votes in the territory outside of the platted city limits were in favor of consolidation. *State v. Booth*, 149 N. W., 244.

4. **Platted villages.** Where a portion of a platted but unincorporated village was sought to be included in a school corporation by virtue of an election, a failure to provide separate ballot boxes for the district, including the village, and for the outside territory, did not render the election void. *Ibid.*

The word "incorporated" as it appears in Par. (a) of this section in reference to the limits of villages is construed as meaning the same as "platted." *Ibid.*

5. **Reduction of territory.** As to whether the territory of consolidated school districts organized under the provisions of this section may be subsequently reduced by the organization of other school districts of the same character, the judges of the court were equally divided. *State v. Board of Directors*, 148 Iowa, 487; 127 N. W., 982.

6. **Special elections.** This section contemplates that the question may be submitted at a special election. *Wallace v. Independent School Dist.*, 150 Iowa, 711; 130 N. W., 804.

7. **Transportation.** Transportation as provided in section 2794-a does not apply to schools organized under section 2794, but applies to consolidated schools only. However, transportation in the rural schools is many times advisable. Decision, 125.

8. **Boundaries.** The description of the boundaries given in the original notice and the notice of election should be the same. Decision, 129.

9. **Notice.** The statute, however, does not require that the description shall be printed on the ballot as the voters have ample opportunity to familiarize themselves with the posted description of the territory included in the consolidation. Decision, 129.

10. **Notice.** Ten days' notice is necessary but in computing time the first shall be excluded and the last day included. The notice must bring the meeting to the attention of the voter at the very time that he is called upon to vote. 152 Iowa, 623.

11. **Unplatted tracts.** Tracts not platted for the purpose of creating a town or village can scarcely be considered within the contemplation of this law. 152 Iowa, 623.

12. **Subdistrict may be divided.** A subdistrict is not a school corporation hence may be divided in forming a consolidated district. In case such subdistrict be divided the remedy is re-arrangement of the remaining territory in the township. 152 Iowa, 623.

13. **Unincorporated villages.** Ordinarily the statute is applicable to the unincorporated village and the limits of such villages are to be ascertained from the platting thereof.

14. **Two ballot boxes.** In forming a consolidated district under Section 2794-a two ballot boxes are necessary if a city, town or village be included in the proposed district. 151 N. W., 56.

15. **Number of notices.** It is not necessary that five notices be posted in each independent school district in establishing a consolidated school corporation. 152 Iowa, 565.

16. **Constitutionality.** This statute is not unconstitutional because not providing an appeal to the county superintendent. 165 Iowa, 697.

17. **Consolidated districts may reorganize.** A consolidated district which has once been formed may extend its boundaries by repetition of the operations used in the original organization. *Arnold v. Consolidated District of Norwalk.*

18. **Platted towns.** A farm subdivided into smaller tracts would not constitute a village under this section. *Consolidated District of Webster and Jefferson Townships v. P. H. Martin.*

19. **Remaining portion of township.** When a consolidated district is formed leaving one or more portions of a township each portion becomes an independent district. Attorney General.

20. **Size of district remaining.** No portion of the school township or school district remaining may contain less than four government sections of land.

21. **Independent district.** The remaining portion of the school township after the formation of a consolidated independent district becomes an independent district and is presided over by three directors. The school board should proceed to elect school officers in accordance with the new district boundaries and the newly elected officers would assume their duties of office at the next regular period for the qualification of directors in rural independent districts.

22. **May reorganize.** There is nothing in the law that will prevent the remaining portions of a township which have become independent automatically from reorganizing into subdistricts in accordance with Section 2752.

Sec. 2794-b. **State aid to consolidated schools—equipment and maintenance—two-room building—agriculture and home economics.** That all consolidated schools organized in accordance with the provisions of the code supplement section twenty-seven hundred ninety-four-a as amended by chapter one hundred forty-three of the acts of the thirty-fourth general assembly which are now or hereafter established with suitable grounds and a two-room school building and the necessary departments and equipment for teaching agriculture and home economics, or other industrial and vocational subjects, and employing teachers holding a certificate showing their qualifications to teach said subjects, and in which said subjects are provided as a part of the regular course in such schools, subject to the approval of the superintendent of public instruction, shall be awarded and paid from the state treasury from moneys not otherwise appropriated, the sum of two hundred fifty dollars towards the equipment required, and the further sum of two hundred dollars annually. [35 G. A., ch. 250, § 1.]

Sec. 2794-c. **Same—three-room building—manual training.** That all such schools established with a three-room school building and suitable grounds and the necessary departments and equipment for teaching agriculture, home economics and manual training, or other industrial and vocational subjects, and employing teachers holding a certificate showing

their qualification to teach said subjects, and in which said subjects are provided as a part of the regular course in such schools, subject to the approval of the superintendent of public instruction, shall be awarded and paid from the state treasury from moneys not otherwise appropriated, the sum of three hundred fifty dollars towards the equipment required and the further sum of five hundred dollars annually. [35 G. A., ch. 250, § 2.]

Sec. **2794-d. Same—four-room building.** That all such schools established with four rooms or more and suitable grounds and the necessary departments and equipment for teaching agriculture, home economics and manual training, or other industrial and vocational subjects, and employing teachers holding a certificate showing their qualifications to teach said subjects, and in which said subjects are provided as a part of the regular course in such schools, subject to the approval of the superintendent of public instruction, shall be awarded and paid from the state treasury from moneys not otherwise appropriated the sum of five hundred dollars towards the equipment required, and the further sum of seven hundred fifty dollars annually. [35 G. A., ch. 250, § 3.]

Sec. **2794-e. Report by secretary—requisition—warrant.** The secretary of each school corporation shall, at the close of each school year, report to the superintendent of public instruction as said officer may require; upon receipt of a satisfactory report, the superintendent of public instruction shall issue a requisition upon the auditor of state for the amount due such school corporation for said year; whereupon the auditor of state shall draw a warrant on the state treasury payable to such school corporation for the amount of said requisition, and forward the same to the secretary of such school corporation. [35 G. A., ch. 250, § 4.]

Sec. **2794-f. No additional aid for normal course in high school.** No consolidated school having a high school department shall receive additional aid for maintaining the normal training course in high schools as provided in chapter one hundred thirty-one, acts of the thirty-fourth general assembly. [35 G. A., ch. 250, § 5.]

Sec. **2794-g. Annual appropriation.** That the law as it appears in section twenty-seven hundred ninety-four-g, supplement to the code, 1913, be and the same is hereby repealed and the following enacted in lieu thereof:

"For the purpose of carrying out the provisions of this act there is hereby appropriated annually out of any money in the state treasury, not otherwise appropriated, the sum of one hundred thousand dollars, or so much thereof as may be necessary. In the event the foregoing appropriation shall be insufficient in any year to pay in full the state aid to which the schools described in sections twenty-seven hundred ninety-four-b, twenty-seven hundred ninety-four-c and twenty-seven hundred ninety-four-d, supplement to the code, 1913, the said appropriation shall be distributed among the several schools pro rata in proportion to the amount they would have received had said appropriation

been sufficient to pay in full the amounts provided for in said sections." [36 G. A., S. F. 282, § 1; 35 G. A., ch. 250, § 6.]

Sec. **2795. Organization.** If the proposition to establish an independent district carries, then the same board shall give the usual notice for a meeting to choose a board of directors. Two directors shall be chosen to serve until the next annual meeting, two until the second, and one until the third annual meeting thereafter. The board shall organize by the election of officers in the usual manner. [15 G. A., ch. 27; C. '73, § 1802; R., §§ 2099, 2100, 2106.]

Notes: 1. **When organize.** The first board will enter upon its duties as soon as qualified and will organize by choosing a president and a secretary. The term of office of the president will expire on the third Monday in the following March, that of the secretary on the first day of July following. In cities and towns a treasurer, to serve until the first day of the following July, will be chosen at the time the directors are chosen.

2. **Certificate of organization.** The secretary should immediately file with the county superintendent, auditor and treasurer, each, a certificate showing the officers of the board, and their postoffice address. All subsequent changes made in the officers of the board should be reported. Section 2766.

3. **Officers—when qualify.** The secretary and treasurer must qualify within ten days. Section 2760.

4. **Record of organization.** All proceedings connected with the organization of the new district should be recorded by the secretaries in the records of the districts from which territory is taken, so that the facts concerning its formation and organization may be readily obtained, in case the validity of the proceedings is ever questioned.

5. **Division of assets and liabilities.** As soon as the board of the new independent district has been organized, it may join with the boards from which territory has been taken in making a division of the assets and liabilities. Section 2802.

6. **Validity of organization.** See note 5, section 2743.

Sec. **2796. Taxes certified and levied.** The organization of such independent district shall be effected on or before the first day of August of the year in which it is attempted, and, when completed, all taxes certified for the school township or townships of which the independent district formed a part shall be void so far as the property within the limits of the independent district is concerned, and the board of such independent district shall fix the amount of all necessary taxes for school purposes, including schoolhouse taxes, at a meeting called for such purpose at any time before the third Monday of August, which shall be certified to the board of supervisors on or before the first Monday of September, and it shall levy said tax at the same time and in the same manner that other school taxes are required to be levied. [C. '73, § 1804.]

Notes: 1. **When organization completed.** This section is construed to mean that the organization contemplated must be made between January first and the first of August. This limitation as to time is directory only, and does not apply when an appeal is taken. 110 Iowa, 652. Decisions, 74.

2. **Taxes.** When a new independent school district is organized as provided by this section, the board has authority to determine and certify all necessary taxes, for school purposes, for that year, including schoolhouse taxes.

3. **Joint district—jurisdiction.** An independent school district composed of territory from two or more counties, belongs, for school purposes, to the

county in which the school corporation, with whose board the petition for separate organization was filed and which conducted the elections for the organization of the new corporation, is located. Certificates of the teachers of such corporations must be registered with the superintendent of the same county.

Sec. 2797. **Rural independent districts.** At any time before the first day of August, upon the written request of one-third of the legal voters in each subdistrict of any school township, the board shall call a meeting of the voters of the subdistrict, giving at least thirty days' notice thereof by posting three notices in each subdistrict in each school township, at which meeting the voters shall vote by ballot for or against rural independent district organization. If a majority of the votes cast in each subdistrict shall be favorable to such independent organization, then each subdistrict shall become a rural independent district, and the board of the school township shall then call a meeting in each rural independent district for the choice of three directors, to serve one, two and three years, respectively, and the organization of the said rural independent district shall be completed. [22 G. A., ch. 61.]

Notes: 1. **When taken.** The vote upon the change may be taken at any time of year, but the organization cannot be completed between August and January.

2. **Must carry in all.** Unless each and every subdistrict in the school township gives a majority vote favoring the change in form, the township remains a school township.

3. **Town or village may organize.** A single subdistrict may be organized independent only when a village, town or city is included. Section 2794.

4. **Assets and liabilities.** When the new boards are organized, they should meet as soon as possible, and make settlement of assets and liabilities, as directed by section 2802.

5. **Suit.** Suit against the new districts on indebtedness of the old district must be brought in equity. *Fairfield v. Rural Ind. School Dist.*, 111 Fed., 108.

6. **Agreement.** If the new districts have by agreement divided and apportioned between them the indebtedness of the old district, then an action against them may be at law. *Fairfield v. Rural Ind. School Dist.*, 111 Fed., 453.

7. **One subdistrict may not.** One subdistrict cannot be changed to a rural independent district unless all the subdistricts of the school township vote to become rural independent districts.

8. **Validity of organization.** See note 5, section 2743.

Sec. 2798. **Subdivision of independent districts.** Independent districts may subdivide for the purpose of forming two or more independent districts or have territory detached to be annexed with other territory in the formation of an independent district or districts, the board of directors of the original independent districts to establish the boundaries of the districts thus formed, such new districts to contain not less than four government sections of land each; but in case a stream or other obstacle shall debar a number of children of school privileges, an independent district may be thus organized containing less territory; or, if such new district shall include within its territory a town or village with not less than one hundred inhabitants, it may in like manner be made up of less territory; but in neither case shall the new

district contain less than two government sections of land, nor be organized except on a majority vote of the electors of each proposed district, and the proceedings for such subdivision shall in all respects be like those provided in the section relating to organizing cities and towns into independent districts so far as applicable. [18 G. A., ch. 131; 17 G. A., ch. 133, §§ 1-4.]

Notes: 1. **Township lines not a bar.** The provisions of this section apply to all independent districts, and civil township lines are not a bar.

2. **Area.** The amount of territory cannot be less than an equivalent of four government sections, unless the provision of this section apply.

3. **When less than four sections.** An independent district containing territory amounting to less than eight government sections may be divided into two independent districts, if an unbridged stream or other obstacle prevents a considerable number of scholars from attending school, or if one portion contains a village of not less than one hundred inhabitants. The district so formed must contain territory amounting to not less than two government sections, and a majority of the votes cast in each contemplated district must be cast for the division.

4. **Minimum.** When an independent district is subdivided under this section the one of the districts not formed in accordance with the exception made must have at least four sections.

5. **Validity of organizations.** See note 5, section 2743.

6. **New boards necessary.** Attorney general, report 1906, page 194; notes 2, section 2793, and 22, section 2802.

7. It was not the intention of the legislature to invest school boards with power to form new independent districts without a vote of the electors. Decisions, 116.

Sec. 2799. **Uniting independent districts.** Independent districts located contiguous to each other may unite and form one and the same independent district in the manner following: At the written request of any ten legal voters residing in each of said independent districts, or, if there be not ten, then a majority of such voters, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place for a meeting of the electors residing in each of such districts, by posting written notices in at least five public places in each of said districts, at which meeting the electors shall vote by ballot for or against a consolidated organization of said independent districts, and, if a majority of the votes cast at the election in each district shall be in favor of uniting said districts, the secretaries shall give similar notice of a meeting of the electors as provided for by law for the organization of independent districts including cities and towns. [22 G. A., ch. 63, § 1; C. '73, § 1811.]

Notes: 1. **Vote separately.** The proposition to consolidate independent districts must be separately voted upon in each of the districts affected. Unless a majority of the votes cast at such election in each district is in favor of such consolidation, it fails.

2. **Application.** The provisions of this section also apply to rural independent districts. Opinion of attorney general, report 1902, page 161.

3. **Times for elections.** It is not essential for the consolidation of two school districts that the election in each district be held at the same time, as code section 2799, governing such elections, is only directory. 130 Iowa, 100.

4. **Validity of organization.** See note 5, section 2743.

Sec. **2800. Rural independent districts united into school township.** A township which has been divided into rural independent districts may be erected into a school township by a vote of the electors, to be taken upon the written request of one-third of the legal voters residing in such civil township. Upon presentation of such written request to the township trustees, they shall call a meeting of the electors at the usual place or places of holding the township election, upon giving at least ten days' notice thereof by posting three written notices in each rural independent district in the township, and by publication in a newspaper, if one be published in such township, at which meeting the said electors shall vote by ballot for or against a school township organization. If a majority of the votes cast at such election be in favor of such organization, each rural independent district shall become a subdistrict of the school township, and shall organize as such on the first Monday in March following, by the election of a director, notice of which shall be given as in other cases by the secretary of each of the rural independent districts, and the directors so elected shall organize as a board of directors of the school township on the first day of July following, unless that date falls on Sunday, in which case on the day following. [31 G. A., ch. 136, § 11; 16 G. A., ch. 155; C. '73, §§ 1815-20.]

Notes: 1. **Who may act.** The electors of any civil township which has adopted the rural independent school district organization, may vote upon the question of returning to the school township organization.

2. **Petition—to whom presented.** The petition provided for in this section may be presented to the trustees and the vote ordered at any time of the year. When a proper petition is presented, the law makes it mandatory upon the township trustees to call and hold an election.

3. **A school township meeting.** The meeting held to determine the question of school township organization, is a township meeting; if the vote is in the affirmative, each and every rural independent school district in the township becomes a subdistrict of the school township.

4. **Election of judges.** The township trustees may act as judges of this election, but in their absence the electors assembled may choose a chairman and one or two secretaries to act as judges.

5. **When organization completed.** The board of each rural independent school district will continue to act until the first day of July following the election, at which time a full statement of all assets and liabilities of the district should be reported to the board of the school township when organized.

6. **Township as a single district.** The first board of a school township formed from a township organized as a single rural district, will consist of three directors elected by the whole township. Section 2752. If this board chooses to subdivide the township it may do so. Section 2801.

7. **Township meeting.** The school township meeting is held on the second Monday in March, to vote the necessary school house taxes as provided in section 2749.

8. **Authority of boards.** Between the time of the election provided for and the first day of July following, the boards of the several rural independent school districts have authority to perform all necessary acts relating to the affairs of their districts, but they cannot incur any indebtedness, nor make any contracts, except such as may be necessary to maintain the usual schools of their districts.

9. **Duty of secretary.** Upon the organization of the school township, the secretary should file with the county auditor and treasurer a certified plat of the district, and report to the county superintendent, auditor and treasurer, the name and address of each officer of the new board. Section 2766.

10. **Assets and liabilities.** The school township receives all the assets and assumes all the liabilities of the several rural independent school districts. In case a rural independent school district has issued bonds or otherwise incurred an indebtedness, for the erection of a schoolhouse and the electors have failed to provide for the payment thereof, the board of the school township has authority to apportion school house taxes for the payment of such indebtedness, from time to time, as justice and equity may require. Section 2813.

11. **Validity of organization.** See note 5, section 2743.

Sec. 2801. **Division of school township into subdistricts.** The board of any school township may by a vote of a majority of all the members thereof, at the regular meeting in July, or at any special meeting called thereafter for that purpose, divide the school township into subdistricts such as justice, equity and the interests of the people require, and may make such alterations of the boundaries of subdistricts heretofore formed as may be deemed necessary, and shall designate such subdistricts and all subsequent alterations in a distinct and legible manner upon a plat of the school township provided for that purpose, and shall cause a written description of the same to be recorded in the records of the school township, a copy of which shall be delivered by the secretary to the county treasurer and also to the county auditor, who shall record the same in his office. The boundaries of subdistricts shall conform to the lines of the congressional divisions of land, and the formation or alteration of subdistricts as contemplated in this section shall not take effect until the first Monday in March thereafter, at which time a director shall be elected for any subdistrict newly formed. [31 G. A., ch. 136, § 12; 21 G. A., ch. 124; 16 G. A., ch. 109; C. '73, §§ 1725, 1738, 1796; R., § 2038.]

Notes: 1. **Compliance.** All changes in subdistrict boundaries must be made in strict conformity with this section.

2. **Vote necessary.** Subdistrict boundaries can be changed only by affirmative vote of a majority of all the members of the board.

3. **When made.** While this section provides that boards may change subdistrict boundaries at the regular meeting in July, or at a special meeting called for that purpose, it must be understood that such change cannot be made so late as to prevent the notices of election from being given at least five days previous to the subdistrict elections, as required by section 2751.

4. **Change of civil township—effect of.** When new civil townships are formed, the corresponding changes in school township boundaries take effect at the next subdistrict election. Section 2790.

5. **All territory in some corporation.** All territory must be included within some school corporation, and all of a school township must be included in some subdistrict, when the territory is so subdivided. Decisions, 33, S. Law 1907.

6. **Subdistrict not a corporation.** A subdistrict is not a corporate body and has no financial claims, nor can it be held liable for debts, except as a part of the school township. Decisions, 14.

7. **Redistricting.** The board may discontinue or abolish any subdistrict by a readjustment of boundaries, and it may provide that there shall be no subdistricts and that the schools of the corporation shall be governed by a board of three directors chosen from the township at large. Section 2752.

8. **County officers notified.** It is especially important that the county auditor and treasurer be officially notified by the secretary, whenever any changes are made in the district boundaries, by the formation of independent districts or otherwise, to enable these officers to perform their duties in the levy of taxes, and the apportionment and disbursement of school funds.

9. **Congressional divisions.** By congressional divisions of land is meant those divisions authorized by congress in government surveys, of which the smallest is, in general, one-sixteenth of a section, or a tract of forty acres in a square form. Government lines, however, sometimes meander along streams and other bodies of water, and divisions of land are thus formed of less than forty acres. Decisions, 33, S. Law 1907.

10. **Number necessary for new subdistrict.** There is nothing in the law fixing the number of persons of school age necessary for a new subdistrict, nor is the exact amount of territory to be included determined by the law.

11. **Entire corporation considered.** When establishing subdistrict boundaries the interests of the entire corporation must be considered. Decisions, 97.

Sec. 2802. **Changes of boundaries—division of assets and liabilities.** When any changes are made in the boundaries of any school corporation the new corporation shall elect a board of directors in accordance with the new boundaries, and such new boards shall organize as provided in section twenty-seven hundred fifty-seven (2757) of this chapter. The boards of directors in office at the time the changes are made in the boundaries of the school corporation, shall continue to act until the boards of directors representing the newly formed districts have been duly organized, whereupon the new boards shall make an equitable division of all assets and liabilities of the corporations affected; and, if they cannot agree, the matters upon which they differ shall be decided by disinterested arbitrators, one selected by each board having an interest therein, and if the number thus selected is even, then one shall be added by the county superintendent, and the decision of the arbitrators shall be made in writing, either party having the right to appeal therefrom to the district court. [31 G. A., ch. 136, § 13; C. '73, § 1715.]

Notes: 1. **Assets and liabilities.** Assets include schoolhouses, sites and all other property and moneys belonging to the district. Liabilities include all debts for which the district in its corporate capacity is liable. In determining the assets, school property should be estimated at its present cash value.

2. **Assets—apportionment of.** The division of assets will relate to the schoolhouse and other property, moneys in all funds on hand, and uncollected taxes. The territory transferred carries with it such a part of the assets and liabilities of the corporation to which it belonged as the assessed valuation of such territory is part of the assessed valuation of the property of the corporation.

3. **Teachers' fund—apportionment.** Any portion of the teachers' fund derived from the semi-annual apportionment, should be divided in proportion to the number of persons between five and twenty-one years of age, according to the last enumeration.

4. **Schoolhouse—where belong.** Schoolhouses will usually become the property of the district in which they are situated. If their value exceeds the amount justly due that district, and there is not sufficient schoolhouse fund on hand to equalize the division, the boards should fix the amount each district should receive or pay.

5. **Equitable division desired.** An equitable arrangement mutually satisfactory to the parties in interest will be in accordance with the intent of the law. Any agreement should be reduced to writing, and entered upon the records of each district.

6. **Claim.** The districts, after the division, which do not receive their just proportion of school house property, have a claim against those that do obtain more than a due share. The last are indebted to the first in the difference. 36 Iowa, 216.

7. **Unpaid and delinquent taxes—apportionment.** A simple and just method to dispose of unpaid and delinquent taxes, also of all funds in the hands of the county treasurer, is to direct the payment of these funds in such manner that taxes derived from any part of the territory shall be paid to the district to which such territory will then belong.

8. **Recovery.** If money is received which belongs to another, the rule is a general one that the law implies a promise on the part of the receiver to pay it over. Based upon this promise an action may be maintained for its recovery. 11 Iowa, 506; 80 Iowa, 495.

9. **Injunction as a test.** Any conflict between districts with regard to boundaries will be best determined by the one aggrieved asking a court to restrain the county treasurer from paying taxes to the other district, on the ground that the district complaining is entitled to receive said taxes.

10. **Scope of the law.** Section 2793 provides for a change of boundaries between adjoining independent districts and for consolidation.

11. **Change of boundaries.** If the boundary between an independent district and a school township is the line of the civil township, it cannot be changed, under section 2793-a, except there be an incorporated town, and then only by the extension of the corporate limits of such town. If the independent school district includes a portion of a civil township, the remainder of which is a school township, the boundary between the districts may be changed.

12. **Concurrence—appeal.** Where a change of boundaries between districts is desired, and one of the boards acts favorably, a petition may be presented to the other board to concur in that action, although it formerly may have refused to grant a similar petition. From the action of the latter board upon the request an appeal may be taken.

13. **Initiatory—no appeal.** No appeal can be taken from an action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or refusal of the second board is the order from which an appeal may be taken. Decisions, 41, 49.

14. **Power of county superintendent.** When an appeal is taken from the proper board, the county superintendent must affirm the action of one board or the other, but cannot himself modify the action of the board acting first. Decisions, 49.

15. **Assets and liabilities.** Territory transferred from one district to another carries with it an equitable proportion of the assets and liabilities of the district from which it is taken, the district accepting it becomes responsible for such liabilities.

16. **Initiatory—immaterial.** It is not material which board takes the first action with regard to the transfer of territory. Usually it is desirable to secure the action of the board with regard to which there is no doubt, and afterward to endeavor to induce the other board to take the same action. If the board last acting takes an action different in kind it may be regarded as initiating a new order, which in turn must go to the other board for adoption or rejection.

17. **Assets and liabilities—no appeal.** An appeal to the county superintendent will not lie from a joint action of the boards in making a settlement of assets and liabilities. Decisions, 67.

18. **Who may demand.** Demand for settlement and division of assets must be made by one authorized to make such demand upon one authorized to act. 110 Iowa, 702.

19. **Arbitrators—mandamus.** When arbitrators have been appointed, mandamus will lie to compel them to act. 110 Iowa, 702.

20. **Power of arbitrators.** The arbitrators can consider only such assets and liabilities as existed between the districts at the time the new district was formed. 107 Iowa, 73.

21. **Choice of arbitrators.** When the respective boards of directors have met and failed to agree, mandamus may be maintained to compel a choice of arbitrators, but not to compel the making of equitable division. 68 Iowa, 486.

22. **Collection of bonds.** In a suit by the holder of bonds of a district which has ceased to exist by reason of subdivision of its territory into new districts, a court of equity may enforce payment by the new districts in accordance with an equitable apportionment of the liability on the basis of taxable property and population. *Gamble v. Rural Ind. School Dist.*, 146 Fed. 113.

The holder of bonds against the original district may maintain an action in equity against the new districts created out of the original district to enforce the payment of his bonds. *Everett v. Independent Sch. Dist.*, 109 Fed. 697.

23. **Property of original district.** The schoolhouse and all its belongings are the property of the original district until awarded to the newly formed independent district. Such division must be made by the board, and not by the courts. *District Twp. v. Wiggins*, 110 Iowa, 702; 80 N. W., 432.

24. **Actual payment.** The division of assets on the severance of the territory from an independent district necessitates either the sale of the schoolhouse and grounds of such district or the payment to the district to which the severed territory should be attached of a portion of the value of such property. *Williams v. Core*, 124 Iowa, 213; 99 N. W., 732.

25. **Liability on bonds.** A district which is created from another district is liable for its proportion of the indebtedness of the parent district regardless of whether such indebtedness is in excess of the constitutional limitation of indebtedness which the new district might create. *Taylor v. School Dist.*, 97 Fed. 753.

Sec. 2803. **Attending school in another corporation.** A child residing in one corporation may attend school in another in the same or adjoining county if the two boards so agree. In case no such agreement is made, the county superintendent of the county in which the child resides and the board of such adjoining corporation may consent to such attendance, if the child resides nearer a schoolhouse in the adjoining corporation and one and one-half miles or more from any public school in the corporation of his residence. But before granting such consent the county superintendent shall give notice to the board where the child resides and hear objections, if any. In case such consent is given, the board of the district of the child's residence shall be notified thereof in writing, and shall pay to the other district the average tuition per week and an average proportion of contingent expenses for the school or room thereof in which such child attends. If payment is refused or neglected, the board of the creditor corporation shall file an account thereof certified by its president with the auditor of the county of the child's residence, who shall, at the time of the making of the

next semi-annual apportionment, deduct the amount from the sum apportioned to the debtor district, and cause it to be paid to the corporation entitled thereto. [17 G. A., ch. 41; 16 G. A., ch. 64; C. '73, § 1793; R., § 2024; C. '51, § 1143.]

Notes: 1. **By agreement of boards.** This section grants to all boards the power to agree upon terms of attendance. Such agreement should name the amount to be paid, if any, the time during which the stipulation shall be in force, and other matters.

2. **Responsibility under implied contract.** One district may become liable to another for children of the former attending school in the latter under implied contract. Therefore a settlement between the districts for tuition in such cases may be made after the attendance on which it is based has ceased. *Weldon Ind. Sch. Dist. v. Shelby Ind. Sch. Dist.*, 113 Iowa, 549; 85 N. W., 794.

3. **Without agreement of boards.** If scholars reside more than one and one-half miles from a school in their own district and nearer to a school in another district, which they desire to attend, application should first be made to both boards of directors; if the boards refuse to enter into an agreement, they may attend school in such district with the consent of the board of the district where they desire to attend and of the county superintendent of the county in which the children reside.

4. **Different townships.** This section applies to districts in the same or in different civil townships or counties.

5. **Purpose of law.** What is sought by the law is to supply to every child advantages equal as nearly as possible with those afforded to the average child.

6. **When consent of both boards necessary.** If scholars live nearer to a school in their own district, or less than one and one-half miles of one, they can attend school in another district at the expense of their own district, only by an agreement of both boards.

7. **Consent of board necessary.** In no case may scholars attend school in a district in which they do not reside, without the consent of the board thereof.

8. **When superintendent may act.** The first three lines give the boards power to agree upon terms of attendance, without regard to the distance in the case. But advantage may not be taken of the remainder of the section unless all the provisions enumerated are fulfilled.

9. **Distance—how determined.** In determining distances to different schools the measurement must be made by the nearest public highway to each school. And if the person lives off the highway, the distance should be computed by the nearest and most accessible private way as usually traveled from the residence to the highway.

10. **What is sought.** What is sought to be determined is the actual distance necessary to be traveled by the scholar. It may therefore sometimes be required to measure from the door of the home of the scholar to the door of the schoolhouse, in order to ascertain definitely the actual distance from school.

11. **Must provide school.** Every district is bound to provide school facilities for the children thereof; and children living in a school district in one county may attend school in an adjoining district in another county under the provisions of this section. 113 Iowa, 549.

12. **Consent of county superintendent.** In giving or withholding his consent, the county superintendent should consider all the circumstances, and when he has concurred or refused to concur, the matter is concluded for that time, as no appeal will lie.

13. **Position of county superintendent.** The position of the county superintendent is somewhat similar to that of a disinterested arbitrator between the two boards. He should confer with both boards if possible and should take into account all the conditions of the case.

14. **Superintendent should hesitate.** If there is little difference in the distance, or if the schoolhouse of the scholar is only slightly in excess of a mile and a half, then the county superintendent should hesitate to concur, especially if it will weaken the funds or diminish the attendance at the home school so as to unduly impair its success.

15. **Action is concurrent.** The action of the board where the children desire to attend and of the county superintendent is a concurrent one. The two parties are thus supposed to have equal discretionary powers.

16. **Collection of tuition.** Collection of tuition cannot be made by appeal to the county superintendent, but such questions in controversy must be settled through the courts.

17. **Notice.** The notice referred to cannot be said to be officially transmitted unless signed by both the president and secretary. Payment for attendance can be collected from the district where the children reside, only from the date of such notice.

18. **Term of.** This notice holds only for the term, or such time as the county superintendent and board name in their written concurrent agreement.

19. **Mailing, not notice.** Depositing a letter in a postoffice without further proof that such letter reached the party addressed, is not a legal notice as required to secure payment of tuition. Code, section 3531.

20. **Amount—how determined.** The average proportion of tuition and contingent expenses for any number of scholars is found by dividing the amount expended for these purposes in the school where they have attended, by the total attendance in days, and multiplying the quotient by the number of days said scholars have attended.

21. **Average in graded schools.** When scholars attend a graded school, the average tuition should be computed on the basis of the expenses of each pupil in the grade or room in which such scholars are placed; the average expense of contingent fund may be computed as a part of the whole contingent expense of such school.

22. **Comply with law.** Any other action than compliance with the absolute and explicit terms of the law, will render the collection of tuition difficult and in most cases impossible. Decisions, 40.

Sec. **2804. School age—nonresidents.** Persons between five and twenty-one years of age shall be of school age. Nonresident children and those sojourning temporarily in any school corporation may attend school therein upon such terms as the board may determine. The parent or guardian whose child or ward attends school in any independent district of which he is not a resident shall be allowed to deduct the amount of school tax paid by him in said district from the amount of the tuition required to be paid. [C. '73, § 1795.]

Notes: 1. **Under school age.** Children under five years of age would be more injured by the confinement than benefited by the instruction. They cannot claim the advantages of the school, and should not be allowed to attend. They may not be admitted to receive instruction even upon the payment of tuition.

2. **Over school age.** Persons over twenty-one years of age are not entitled to attend the public schools, but they may be admitted upon such terms as the board deems proper.

3. **Board determines residence.** The board should be satisfied that the residence of the scholar in the district is actual before allowing free attendance.

4. **Method of determining.** In determining whether a person is entitled to attendance free of tuition, the board may take any impartial method of deciding the question. Decisions, 68.

5. **Appeal.** Any one aggrieved by an order of the board admitting, or refusing to admit, a scholar, has the remedy of appeal.

6. **Taxes not basis for attendance.** Paying school taxes does not entitle non-residents to school privileges, but school taxes paid in an independent district shall be deducted from the amount of tuition required of a non-resident pupil.

7. **Self-supporting minors.** Young people who are making their own living should not be excluded from school privileges in the district where they are at home.

8. **Admission of pupil—mandamus.** The action of a school board in denying a pupil free admission to the schools on the ground of non-residence cannot be reviewed in a mandamus proceeding; the remedy is appeal. 124 Iowa, 355.

Sec. 2804-a. **Display of United States flag—duty of board—flagstaff.** That it shall be the duty of the board of directors of each school corporation of this state to provide a suitable flagstaff on each public school building maintained under the authority of such board of directors and to provide each of such school buildings with a suitable flag, and such flag shall be raised over such building on all days when weather suitable therefor shall prevail. [35 G. A., ch. 244, § 1.]

Sec. 2804-b. **Flag raising services.** That at the commencement of each school day the teacher, superintendent, principal or whoever has the general supervision of the school administration within any such building, may arrange for the raising of such flag, as herein provided for, over the said building, with appropriate services, when weather conditions will permit, at the beginning of each school day. [35 G. A., ch. 244, § 2.]

Sec. 2804-c. **Flag upon all public buildings.** That it shall be the duty of the custodians of all public buildings of the state of Iowa to raise over such building the flag of the United States of America, upon each secular day when weather conditions are favorable, and it shall be the duty of any board of public officers charged with the duty of providing for the supplies of any such public building, to provide in connection with other supplies for any such building of the state of Iowa, a suitable flag for the purposes herein provided. [35 G. A., ch. 244, § 3.]

Sec. 2805. **Bible not excluded.** The bible shall not be excluded from any public school or institution in the state, nor shall any child be required to read it contrary to the wishes of his parent or guardian. [C. '73, § 1764; R., § 2119.]

Notes: 1. **A suitable exercise.** Our common schools are maintained at public expense, and the law contemplates that they shall be equally free to persons of every faith. A very suitable devotional exercise consists in the teacher's reading a portion of scripture without comment, and the repetition of the Lord's prayer.

2. **Teacher determines.** Neither the board nor the electors may direct the teacher to follow a given course in respect to the reading of the bible in school. Each teacher will be guided by his own good judgment, restricted only by the provision that no child shall be required to read it contrary to the wishes of his parent or guardian, and such provision is not unconstitutional. 64 Iowa, 367. The wishes of his patrons may properly be given weight in aiding him to determine his action.

3. **Regulation regarding religion.** While moral instruction should be given in every school, neither this section nor the spirit of our constitution and laws will permit a teacher or board to enforce a regulation in regard to religious exercises, which will wound the conscience of any, and no scholar can be required to conform to any particular mode of worship. 64 Iowa, 367.

4. **Moral instruction.** Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, and respect for honest labor, obedience to parents and due deference for old age, should be given by every teacher in the public schools.

5. **Injunction.** If a teacher gives religious instruction or teaches in the interest of any church or denomination, the board may be prevented from continuing or sanctioning such instruction, by injunction from the courts; and having ordered or countenanced this instruction, may be prevented in the same manner from paying such teacher from the public school funds.

6. **Public funds may not be used.** The diversion of the school fund in any form or to any extent for the support of sectarian or private schools is admissible and clearly in violation of our laws. 59 Iowa, 70.

7. **Public funds may not be loaned.** Public money shall not be appropriated, given or loaned by the corporate authorities of any county or township, to or in favor of any institution, school, association or object which is under ecclesiastical or sectarian management or control. Code, section 593.

Sec. 2806. **School taxes—transportation fund—contract for use of library.** The board of each school corporation shall at its regular meeting in July, or at a special meeting called for that purpose between the time designated for such regular meeting and the third Monday in August, estimate the amount required for the contingent fund, not exceeding ten dollars for each person of school age, but each school corporation may estimate not exceeding seventy-five dollars for each school thereof, and such additional sum as may be necessary not exceeding five dollars for each person of school age for transporting children to and from school; and also such additional sum as may be authorized in the chapter on uniformity of textbooks; also such sum as may be required for the teachers' fund, which shall not exceed thirty dollars for each person of school age therein, but each corporation may estimate not exceeding two hundred seventy dollars, for each regular school therein. No tax shall be estimated by the board after the third Monday in August, in each year. School corporations containing territory in adjoining counties may vote and estimate all taxes for school purposes in mills. The board shall apportion any tax voted by the annual meeting for schoolhouse fund among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of such fund. The board of directors of any school corporation in which there is no free public library shall have power to contract with any free public library for the free use of such library by the residents of such school district as provided in section one of

this act and to pay such library the amount agreed therefor, and to certify annually a tax not exceeding one mill on the dollar of the taxable property of such district, to be used exclusively therefor; and during the existence of such contract a tax sufficient to pay such library the consideration agreed upon, not exceeding one mill on the dollar, shall be certified annually by such board. Each school corporation making such contract shall, during the existence of such contract, be relieved from the requirements of section twenty-eight hundred twenty-three-n of the supplement to the code, 1907. This section shall not be construed to apply in townships where a contract is in existence under the provisions of section two of this act. [35 G. A., ch. 251, §§ 1, 2; 35 G. A., ch. 70, § 5; 33 G. A., ch. 182, § 1; 31 G. A., ch. 136, § 14; 28 G. A., ch. 108, § 1; 15 G. A., ch. 67, § 1; C. '73, §§ 1738, 1777-8; R., §§ 2033-4, 2037-44, 2088.]

Notes: 1. **Specific sums certified.** This section requires boards to certify the specific sums necessary to be raised for teachers' and contingent funds to the board of supervisors, whose duty it is to estimate and levy the per centum necessary to raise the amounts so certified.

2. **Joint districts certify mills.** Districts formed from territory lying in adjoining counties, may vote and certify to the respective boards of supervisors the number of mills on the dollar required to raise the necessary school taxes.

3. **Tax void.** The general rule is that a tax estimated by the board after the third Monday in August is void. This renders it essential that boards certify taxes within the required time. 73 Iowa, 304. For exception see sections 2767, 2796, 3973.

4. **Schoolhouse fund voted by electors.** It is the rule that schoolhouse funds must be voted by the electors. Exceptions, sections 2767, 2796, 2811, 2813 and 3973.

5. **Board determines amount necessary.** It is wholly within the discretion of the board to determine the amounts required for the contingent and teachers' funds. 41 Iowa, 153. Any vote of the electors with reference to these amounts is only suggestive, and is not at all binding.

6. **Limit of levy.** This section limits the amount which may be levied for any one year, to thirty dollars per scholar for teachers' fund, ten dollars per scholar for contingent fund, and five dollars per scholar extra when necessary for transportation of pupils; but authorizes the levy of seventy-five dollars for contingent, and two hundred and seventy dollars for teachers' fund for each regular school, even if the levy thereby exceeds five and fifteen dollars per scholar, for these funds. When free text-books have been authorized, an additional amount not exceeding one and one-half dollars for each person of school age may be estimated for the contingent fund. Section 2825.

7. **Maximum levy.** If the amount of schoolhouse tax voted and certified by the board of directors in any one year exceeds the limit which the board of supervisors is allowed to levy under the provisions of this section, it is the duty of the board of supervisors to levy only the maximum amount authorized by law. Section 2807.

8. **Apportionment of funds.** The teachers' and contingent funds are not to be apportioned among the subdistricts, but levied uniformly on the taxable property of the school township.

9. **When not apply.** The first provision in this section does not apply where a larger tax is required to meet the interest on valid outstanding bonds. 69 Iowa, 612. Section 2813.

10. **Minimum levy.** The second provision in this section was added for the relief of sparsely settled communities, in which five dollars per scholar for contingent fund and fifteen dollars per scholar for teachers' fund, is not adequate to maintain schools for the time required by law.

11. **How compel secretary to certify.** To determine conclusively whether it is the duty of the secretary to certify a tax supposed to have been voted by the voters, but with regard to which vote there is some doubt, an application to a court for a writ of mandamus or injunction, as the case may be, will secure a settlement of all questions involved.

12. **When levy unnecessary.** If the board finds a sufficient amount of teachers' fund and contingent fund on hand and in sight to support the schools for the current year, it may decline to certify any amount to be raised under this section.

13. **Taxes—laches—estoppel.** 123 Iowa, 55.

14. **Taxes—recovery.** 109 Iowa, 606.

Sec. **2807. Levy by board of supervisors.** The board of supervisors shall at the time of levying taxes for county purposes levy the taxes necessary to raise the various funds authorized by law and certified to it under this chapter, but if the amount certified for any such fund is in excess of the amount authorized by law it shall levy only so much thereof as is authorized by law. If a schoolhouse tax is voted at a special meeting and certified to said board after the regular levy is made, it shall at its next regular meeting levy such tax and cause the same to be forthwith entered upon the tax list to be collected as other school taxes. It shall also levy a tax for the support of the schools within the county of not less than one nor more than three mills on the dollar on the assessed value of all the taxable property within the county. [C. '73, §§ 1779-80; R., §§ 2057, 2059.]

Notes: 1. **Transfer.** A board of review has no authority to transfer property from one school corporation to another for assessment. 108 N. W., 220.

2. **Taxes—liability.** Property in a school corporation at the time of the levy of a schoolhouse tax is liable for the tax, though not a part of the corporation at the time the tax was voted. 108 N. W., 528.

3. **Excessive schoolhouse tax.** The fact that the electors at their meeting voted a schoolhouse tax in excess of that which is legal to be levied in one year does not render the election void.

4. **Taxes erroneously levied.** Where taxes were levied upon land in one school district at a rate applicable to an adjoining district and the same were erroneously paid to the adjoining district, the district in which the land was situated might recover back the taxes thus obtained as for money had and received, even though complaint might have been made by the taxpayers. *Ind. School Dist. of Kelly v. School Twp. of Washington*, 162 Iowa, 42; 143 N. W., 837.

Sec. **2808. Apportionment.** The county auditor shall on the first Monday in April and the first Monday in October of each year, apportion to the school tax, together with the interest of the permanent school fund and rents on unsold lands to which the county is entitled as shown in the notice from the auditor of state, and all other money in the hands of the county treasurer belonging in common to the schools of the county and not included in any previous apportionment among the several corporations therein, in proportion to the number of per-

sons of school age, as shown by the report of the county superintendent filed with him for the year immediately preceding. He shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation. The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that he is authorized to pay other school moneys to the treasurers of the several school districts. [32 G. A., ch. 151, § 3; 27 G. A., ch. 94; C. '73, §§ 1781-2, 1841; R., §§ 1966, 2060-1.]

Notes: 1. **Warrant for.** This warrant must be signed by the president and countersigned by the secretary, to authorize payment of the amount named therein upon presentation by the district treasurer.

2. **Basis of apportionment—review.** The auditor, in making the apportionment, performs a ministerial duty and is without authority to review the school census. 111 N. W., 943.

Sec. 2809. **Auditor to report.** The county auditor, shall on the first Monday in January of each year, forward to the superintendent of public instruction a certificate of the election or appointment and qualification of the county superintendent, and shall also on the first day of January of each year make out and transmit to the auditor of state, in accordance with such forms as said auditor may prescribe, a report of the amount of permanent school fund held by the county and also the amount of interest due prior to January first, still remaining unpaid, and shall file said report with the auditor of state on or before the first day of February. [32 G. A., ch. 151, § 2; C. '73, § 1783.]

Notes. 1. **Certificate of election.** This certificate should be forwarded to the superintendent of public instruction as soon as the qualification and bond, properly approved, have been filed in the office of the county auditor.

2. **What certificate should show.** The certificate should in all cases certify to the qualification as well as the election or appointment of the county superintendent, for although he may be properly elected or appointed, yet he cannot be recognized until it is known that he has taken the necessary oath of office, and that his bond is approved.

3. **In case of change.** Whenever any change is made by resignation or otherwise, a certificate of the appointment and qualification of a successor should be immediately forwarded.

Sec. 2810. **Taxes paid over.** Before the third Monday of January, April, July and October in each year, the county treasurer shall give notice to the president of the board of each school corporation in the county of the amount collected for each fund to the first day of such month, and the president of each board shall draw his draft therefor, countersigned by the secretary, upon the county treasurer, who shall pay such taxes to the treasurers of the several school boards only on such draft. He shall also keep the amount of tax levied for schoolhouse purposes separate in each subdistrict where such levy has been made directly upon the property of the subdistrict, and shall pay over the same quarterly to the treasurer of the school township for the benefit of such subdistrict. [C. '73, §§ 1784-5.]

Notes: 1. **Certify amount collected.** It is the duty of the county treasurer to notify the president of the board of each district, quarterly, of the amount collected for each fund and pay it to the district treasurer on the warrant of the president countersigned by the secretary.

2. **When draft is drawn.** Whenever a draft is drawn on the county treasury, it is the duty of the secretary to charge the district treasurer with the amount named in the draft, keeping a separate account with each fund. Section 2761.

3. **Funds kept separate.** Except in consolidated districts the four funds —teachers', schoolhouse, contingent and school building bond fund—must be kept separate by the county treasurer, as directed in this section, to enable school officers to comply with the law in the discharge of their official duties. Sections 2761, 2762, 2768 and 2769.

4. **Division reported by county treasurer.** The division of funds made by the county treasurer must be respected by the board, unless the electors direct schoolhouse funds unappropriated transferred to other funds. This is the only transfer provided for by law. Section 2749.

Sec. **2811. Judgment tax.** When a judgment shall be obtained against a school corporation, its board shall order the payment thereof out of the proper fund by an order on the treasurer, not in excess, however, of the funds available for that purpose. If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay such judgment, the voters thereof shall at their annual meeting vote a sufficient tax for the purpose. In case of failure or neglect to vote such a tax, the school board shall certify the amount required to the board of supervisors, who shall levy a tax on the property of the corporation for the same. [18 G. A., ch. 132, § 6; C. '73, § 1787; R., § 2095.]

Notes: 1. **No order has preference.** An order drawn under this section is not entitled to payment to the exclusion of other orders. 40 Iowa, 620.

2. **Bonds to pay judgments.** Judgment indebtedness may be converted into bonded indebtedness, but not beyond the constitutional limit.

3. **Limit of indebtedness.** See sections 2820-a to 2820-d.

BONDS—INDEBTEDNESS

Sec. **2812-c. School funding bonds.** The board of directors of any school corporation may issue the bonds of said school corporation to pay any judgment against said school corporation or any indebtedness represented by bonds heretofore lawfully issued. Said bonds shall be known as school funding bonds and shall be authorized by resolution of the board. The proceeds derived from said bonds shall be applied in payment of any such outstanding judgment or bonded indebtedness, or said bonds may be exchanged for outstanding judgments or bonds, par for par. [32 G. A., ch. 152, § 2.]

Notes: 1. **When issued.** Bonds voted under the provisions of this section may be issued and sold as the necessities of the school corporation require.

2. **Funding bonds.** This section authorizes the board of directors of any school corporation to issue funding bonds without a vote of the electors, but the board cannot issue school building bonds without a vote of the electors. See section 2812-d.

3. **Taxes—bonds.** There is no intimate connection between the levy of taxes and an outstanding bonded indebtedness. The levy of taxes is not intended by the law to be considered as an outstanding indebtedness. The

limit of bonded indebtedness is fixed by chapter 41, laws of 1900. The limit for levy of taxes by sections 2749, 2806-7, 2813. See 1306-b.

Sec. **2812-d. School building bonds.** For the purpose of borrowing money necessary to erect, complete, equip, furnish or improve a schoolhouse, or to purchase sites therefor, the board of directors of any school corporation, when they have been heretofore, or when they may hereafter be authorized by the voters at the annual meeting or at a special meeting called for that purpose, may issue the negotiable interest bearing bonds of said school corporation; said bonds to be known as school building bonds. [32 G. A., ch. 152, § 3.]

Notes: 1. **Valuation—tax lists.** As indicating the valuation of the district, the tax lists may not be taken into account until after the levy of the taxes in September. 70 Iowa, 230.

2. **Defeat of proposition—effect of.** The fact that the vote for bonds was defeated will not prevent the board from calling another election at any time when it thinks best to do so.

3. **Issue not mandatory.** While a vote to issue bonds is regarded by the courts as somewhat in the nature of permissive authority to the board, yet a board may not attempt to defeat the wish of the voters clearly expressed. Decisions, 75, laws of 1897.

4. **Compliance necessary.** In the matter of issuing bonds, every legal requirement should be scrupulously adhered to, in order that not even the slightest irregularity may be urged against the validity of the bonds, when they come to be negotiated.

5. **Rights of interested persons.** If a board takes an action calculated to thwart the will of the voters, perhaps any person interested could secure from a court a writ directing the board to proceed in the line of fulfilling the expressed wish of the voters.

Sec. **2812-e. Form—duration—rate of interest—where registered.** All of said bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor, shall run not more than twenty years, and may be sooner paid if so nominated in the bond; be in denomination of not more than one thousand dollars or less than one hundred dollars each, to bear a rate of interest not exceeding five per centum per annum, payable semiannually, to be signed by the president and countersigned by the secretary of the board of directors, and shall not be disposed of for less than par value, nor issued for other purposes than this chapter provides. All of said bonds shall be registered in the office of the county auditor. The expenses of engraving and printing of bonds may be paid out of the contingent fund. [36 G. A., S. F., 630, § 1; 33 G. A., ch. 183, § 1; 32 G. A., ch. 152, § 4.]

Sec. **2812-f. Redemption—treasurer to keep record.** Whenever the amount in the hands of the treasurer, belonging to the funds set aside to pay bonds, is sufficient to redeem one or more of the bonds which by their terms are subject to redemption, he shall give the owner of said bonds thirty (30) days' written notice of the readiness of the district to pay and the amount it desires to pay. If not presented for payment or redemption within thirty days after the date of such notice, the interest on such bonds shall cease and the amount due thereon shall be

set aside for its payment whenever it is presented. All redemptions shall be made in the order of their numbers. The treasurer shall keep a record of the parties to whom the bonds are sold, together with their postoffice addresses, and notice mailed to the address as shown by such record shall be sufficient. [32 G. A., ch. 152, § 5.]

Sec. 2813. **Tax to pay bonds or money borrowed.** The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county, the amount required to pay interest due or that may become due for the year beginning January first thereafter, upon lawful bonded indebtedness and in addition thereto such amount as the board may deem necessary to apply on the principal; but the amount estimated and certified to apply on principal and interest for any one year shall not exceed five mills on the dollar of the actual valuation of the taxable property of the school corporation. [35 G. A., ch. 252, § 1; 27 G. A., ch. 95, § 2; 18 G. A., ch. 51, § 2; 18 G. A., ch. 132, § 6; C. '73, § 1823.]

Note: It is the duty of the board to certify whatever amount is necessary to pay principal and interest on bonds. 69 Iowa, 612.

Sec. 2813-a. **Tax levy.** The board of supervisors of the county to which the certificate is addressed within the contemplation of this act shall levy the necessary tax to raise the amount estimated, or so much thereof as may be lawful and within the limitation of this act, which levy shall be made as other taxes for school purposes. [35 G. A., ch. 252, § 2.]

Sec. 2813-b. **To what applicable.** This act shall apply to estimates heretofore made, certificates furnished, or taxes levied, together with such as may hereafter be made, furnished or levied for the purposes contemplated by this act; but this act shall not apply to pending litigation. [35 G. A., ch. 252, § 3.]

Sec. 2814. **Schoolhouse sites—acquisition.** That section twenty-eight hundred fourteen of the code be and the same is hereby repealed and the following enacted as a substitute therefor:

Any school corporation may take and hold so much real estate as may be required for schoolhouse sites, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed one acre, exclusive of public highway, except in a city, town or village it may include one block exclusive of the street or highway as the case may be, and may take and hold such additional real estate, not exceeding five acres, as may be required for school playground or other purposes; (provided nothing in this act shall affect pending litigation;)[1] or in districts consolidated under the provisions of section twenty-seven hundred ninety-nine of the code, or chapter one

[1]This cause has been placed within parenthesis by the editor. It refers to the amendment made by ch. 253, 35 G. A., as follows: "and may take and hold such additional real estate, not exceeding five acres, as may be required for school playground or other purposes,". EDITOR.]

hundred forty-one of the laws of the thirty-first general assembly, or in school townships holding not more than two school sites, may consist of not to exceed four acres, for any one site, unless by the owner's consent, which site must be upon some public road already established or procured by the board of directors and shall, except in cities, towns, or villages, be at least thirty rods from the residence of any owner who objects to its being placed nearer, and not in any orchard, garden or public park. [35 G. A., ch. 253, § 1.] [32 G. A., ch. 153; C. '73, §§ 1825-6.]

Notes: 1. **Purchase.** The board should, if possible, purchase a site.

2. **Enlarging.** A site of less than one acre may be enlarged to an acre.

3. **Not include road.** The acre authorized to be set apart may be so measured as not to include any portion of the highway. 101 Iowa, 556.

4. **Thirty rods.** The objection of an owner living within thirty rods on the opposite side of a site will not prevent an addition to the site on the side away from the residence, so as to include an entire acre.

5. **Appeal.** From an order of the board making a location of a site to be secured by condemnation, an appeal will lie the same as from any other order of the board.

6. **Incumbered property.** Property incumbered, occupied as a homestead, or belonging to minor heirs, may be taken under the provisions of this section.

7. **Condemn.** If the district cannot establish its claim to the schoolhouse site, owing to the loss of the deed, or for other reason, and the owner refuses to sell or lease the site, the district may avail itself of the provisions of this and the following sections and secure a site not to exceed one acre.

8. **When provisions do not apply.** When purchased, the provisions of this section do not apply. The district stands in the same relation to the public and to individuals, in this respect, as do other corporations, and may purchase whatever amount of land may be necessary for school purposes.

9. **Location.** All sites taken under the provisions of these sections must be located on a public road, and at least thirty rods from the residence of the owner of the site so taken if he objects to its being placed nearer. A person not the owner of the land upon which the site is located cannot legally object if the site is located nearer than thirty rods from his residence. In cities, incorporated towns, or villages, this prohibition does not apply. Decisions 86, School Laws 1892.

10. **How measured.** When a site is sought to be condemned, the distance of thirty rods mentioned in this section, is measured from the nearest part of the residence to the nearest part of the site, in a straight line.

11. **Rebuild.** Boards may rebuild on sites without consent of owners of residences within thirty rods.

12. **Ten years' use.** Under the Iowa statute of limitations, ten years' use of a highway by the public, under a claim of right, will bar the owner of the soil. 19 Iowa, 123.

13. **Title by prescription.** If the public, with the knowledge of the owner of land, has claimed and continuously exercised the right of using the same for a public highway, for a period equal to that fixed by the statute for the limitation of real actions, a complete right to the highway thereby becomes established against the owner, unless it appears that such use was by favor, leave or mistake. 22 Iowa, 457. Code, section 3004.

14. **When mortgaged.** In case the land desired for a school site is under mortgage, the district may receive from the owner the lease of a portion not to exceed the authorized amount, to be held by the district as long as used for school purposes, and when no longer so used, to revert to the owner.

15. **Title.** If a district is in continuous possession under claim of ownership for more than ten years, it becomes the absolute owner of the fee title. 93 Iowa, 45, and 94 Iowa, 676.

16. **Include highways—when.** When land is purchased for a site, it will include a part of the highway on which it is situated, unless otherwise stipulated in the deed.

17. **Four acres.** In consolidated corporations and school townships holding not to exceed two sites, four acres may be acquired for a site.

18. **Owner may object.** Any owner of property may object to the procurement of a site for a schoolhouse within thirty rods of his residence. The objection is not limited to owners of land a portion of which is taken for such site. *Mendenhall v. Board of Directors*, 137 Iowa, 554.

Sec. **2815. Condemnation.** If the owner of the real estate desired for a schoolhouse site, or a public road thereto, refuses or neglects to convey the same, or is unknown or cannot be found, the county superintendent of the proper county, upon the application of either party in interest, shall appoint three disinterested referees, unless a less number shall be agreed upon, who shall take and subscribe an oath to the effect that they will faithfully and impartially discharge the duties laid upon them, due notice having been given by the superintendent to the owner of the time and place of making the assessments of damages as and for the length of time required for the commencement of actions in the district court; such referees shall inspect the grounds proposed to be taken, fix the damages sustained as near as may be on the basis of the value of the real estate so appropriated, and report in writing to the superintendent their doings and findings, which report shall be filed and preserved in his office; and upon the amount found by the referees being deposited with the county treasurer, for the use of the owner, possession may at once be taken and the necessary building or buildings erected and occupied. From the assessment so made either party may appeal to the district court by giving notice thereof as in case of taking private property for works of internal improvement within twenty days after receiving notice of the award made. If such appeal is not taken, the assessment shall be final; if taken, the board may proceed with the construction of improvements, if the deposit hereinbefore provided has been or shall be made. Upon such appeal the school corporation shall not be liable for costs unless the owner shall be allowed a greater sum than given by the referees; all costs in making the referees assessment to be paid by the school corporation. [C. '73, § 1827.]

Notes: 1. **Service.** If personal service cannot be made, the notice must be published in a newspaper. If the owner of the land lives in the county, notice must be served on him at least ten days before the time set for the assessment of damages. If the owner or parties having an interest therein reside outside of the county and in the same judicial district, fifteen days' notice must be given. If outside of the judicial district but in the state, twenty days' notice. If parties live outside of the state, the notice must be published once a week for four consecutive weeks in some newspaper published in the county. Code, section 3514-3544. Forms, 35, 36 and 38.

2. **Oath to referees.** The oath to the referees may not be administered by the county superintendent by reason of his office. Such oath may be administered by some one empowered in a general way to administer oaths. One referee may administer the oath to another referee. Code, section 393. A district may condemn a full acre of land. 101 Iowa, 556.

3. **Opening road.** If the land cannot be procured by contract, the road may be established in the same manner and by the proceedings provided for the establishment of highways, and when the damage has been assessed, the district may pay the same. Sections 1482-1517. Decisions, 68.

4. **Lease—approval.** As a matter of safety, a lease should be executed in duplicate, one to be held by the secretary of the board, and the other by the lessor. The lease should be approved by the board, as in case of a contract, and should be filed with the secretary.

5. **Notice of appraisal.** Sufficient time must be allowed between the appointment of this commission and the time set for appraising the damages to give the owner legal notice thereof. Code, sections 3517 and 3540.

6. **Compensation of referees.** The referees are entitled to two dollars for each day's services, and ten cents per mile from their residence to the location of the property appraised. Code, sections 354 and 1290.

7. **Holder of tax certificate.** The holder of a tax certificate on property sought to be condemned is an owner in such sense that he is entitled to notice. 50 Iowa, 663.

8. **When owner cannot be found.** When the owner of land taken is unknown, or cannot be found, it is not necessary to print the report of appraisement, or to attempt other notice to said owner than the printed notice required by this section. It is sufficient for the county superintendent to send a certified copy to the board.

9. **Possession—deposit.** If the board has deposited with the county treasurer the amount assessed by the referees in accordance with this section, we think the courts would hold that the district had come into possession of the site, or would be entitled to the use of the road.

10. **Money deposited.** The money deposited with the county treasurer should be held for the benefits of the owner of the fee, and not for the mortgagee.

11. **Value of receipt.** Since the receipt of the treasurer for the money deposited with him for the owner of the land, may be the only evidence of title, such a receipt should have a full description of the property, and should be recorded by the county recorder.

12. **Deed not necessary.** No deed or other instrument from the owner is required to authorize the district to occupy the land for school purposes. The proceedings should be recorded in full by the district secretary.

13. **Should be recorded.** All deeds for school property should be recorded with the county recorder, and the proceedings relating to the acquisition of such property should be recorded in full by the district secretary.

14. **Abandonment—condemnation—damages on appeal.** A district may abandon the improvement and decline to pay the amount assessed. 113 Iowa, 486.

15. **Application to supervisors.** When land sought to be taken for a road has been legally condemned, and the amount found by the referees has been deposited with the county treasurer, application should be made by the board to the board of supervisors for the establishment of the road under sections 1482-1517.

16. **Petition by electors.** Petition to the board of supervisors may be made by the electors as individuals. 110 Iowa, 707.

17. **School property not exempt.** The property of school districts in cities and towns is not exempt from special taxation, for improvement of streets and laying of sidewalks. 55 Iowa, 150.

18. **Road—how established.** A road to the schoolhouse may be established in the same manner and by the proceedings provided for the establishment of highways in general, and when the damages have been assessed, the district may pay the same. Sections 1482-1517.

19. **Expense intended.** The expense that is intended shall be paid by the district is not more than that of surveying, locating and establishing the highway. The building of bridges and the repair of the road with the funds of the district would not be warranted by the law.

20. **Under control of.** After a highway has become legally established it is wholly and entirely under the control of the board of supervisors. Code, section 1482.

21. **Private way—permissive use.** The use by a non-owner of a private road is permissive and does not vest in him prescriptive rights in the same. 123 Iowa, 620.

22. **Condemnation—appeal—notice.** It is proper to serve notice of appeal on the county superintendent before whom condemnatory proceedings were commenced. 113 Iowa, 486.

23. **Power to open roads.** The power to obtain the opening of public roads for better access to a schoolhouse having been conferred upon the district, it is fairly to be implied that the district may accomplish that purpose by purchase or by any of the usual and appropriate methods by which a public way may be established. The district may through its board of directors and electors petition the board of supervisors for a road for the benefit of the district, and the funds of the district may be lawfully appropriated for the payment of damages assessed in such proceeding. Certiorari will not lie to review the action of the board of supervisors in establishing such a road. *Brockway v. Board of Supervisors*, 133 Iowa, 293; 110 N. W., 844.

Sec. 2816. **Reversion.** In any school district wholly outside any city or incorporated town, in the case of non-user for school purposes for two years continuously of any real estate acquired for a school house site it shall revert, with improvements thereon, to the owner of the tract from which it was taken, upon repayment of the purchase price without interest, together with the value of the improvements, to be determined by arbitration, and upon such payment the school corporation shall make formal conveyance to such owner. During its use the owner of the right of reversion shall have no interest in or control over the premises. [34 G. A., ch. 144; C., '73, § 1828.]

Notes. 1. **Reversionary clause.** In case of the donation of a schoolhouse site, the following reversionary clause may be appended to the deed: "Provided, that if, for the space of two consecutive years, said premises shall cease to be used for school purposes, the same shall revert to the original donor, his heirs or assigns, without legal hindrance or expense."

2. **Receipt should describe site.** Since the receipt of the treasurer for the money deposited with him, for the owner of the land, may be the only evidence of title, such receipt should have a full description of the property, and contain this proviso in addition to note 1 above: "Upon the repayment of the principal amount paid by the district, without interest, together with the value of any improvements thereon made by the district," and the receipt should be recorded by the county recorder.

3. **Authority of the County Superintendent.** The statutory authority of the county superintendent to direct the holding of school for a less number of weeks than the law requires does not justify him in closing the school for over two years, and in event of such closing, will not prevent forfeiture of the school property. 151 Iowa, 443.

4. **Nonuse of building.** In rural schools, nonuse of school buildings for over two years continuously works a reversion to owner of tract from which land was taken. 151 Iowa, 443.

Sec. 2817. **Use of barbed wire.** Barbed wire shall not be used to enclose any school buildings or grounds, nor for any fence or other purpose within ten feet of any such grounds. Any person violating the provisions of this section shall be punished by fine not exceeding twenty-five dollars. [20 G. A., ch. 103.]

Note: See also sections 2773, 2745-a and 2745-b.

APPEAL.

Sec. 2818. **Appeal to county superintendent.** Any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the county superintendent of the proper county; the basis of the proceedings shall be an affidavit filed with the county superintendent by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner. [C. '73, §§ 1829-31; R., §§ 2133-5.]

Notes: 1. **Matters not appealable.** There are many matters that may not properly be brought before the county superintendent on appeal. From time to time questions are likely to arise upon which the board should be governed by its best judgment, or by competent legal advice.

2. **Official opinions—jurisdiction.** School officers should not express an official opinion upon matters entirely outside of their jurisdiction. Upon these subjects it is therefore useless to expect county superintendents, or this department, to give any other than general information, such as is presumably already within the knowledge of those applying.

3. **Affidavit of appeal—effect of.** The filing of an affidavit of appeal has the effect of arresting all action by the board in relation to the matter appealed from until the appeal is disposed of.

4. **Statu quo.** During the pendency of an appeal all matters must remain in statu quo, and this can be enforced by writ of injunction. No opinion relating to matters involved in an appeal will be given by this department.

5. **Affidavit.** An affidavit is a written declaration sworn to before some officer authorized to administer oaths. Code, section 4673.

6. **Jurisdiction—affidavit.** A county superintendent can have no jurisdiction of an appeal case until the affidavit has been filed. Decisions, 7.

7. **Affidavit necessary.** A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. Form 45. School Law 1907.

8. **Affidavit—contents.** The affidavit should contain a statement of the decision complained of and its date, a statement of facts showing that the appellant has an interest in the decision and is injuriously affected by it, and the assignment of errors. Form 45. School Law 1907.

9. **Affidavit must be clear.** An affidavit of appeal, to be of any value, must be sufficiently clear to enable the county superintendent to call upon the secretary for a complete transcript of an action that must be described so as to be identified.

10. **Title of case.** This affidavit being the first paper filed, care should be taken that the case is properly entitled, and this title should be preserved throughout the further progress of the appeal. The date of filing should be indorsed upon the affidavit by the superintendent.

11. **Notice of filing—effect.** When a board receives official notice that an affidavit of appeal from its order has been filed, all action by the board in relation to the matter appealed from will be suspended until the decision in appeal has been given.

12. **Right of appeal.** The right of appeal is limited to persons aggrieved or injuriously affected by the decision or order complained of. Decisions, 21, 33. School Laws 1907.

13. **When barred.** If a person aggrieved by a decision or order of the board fails to protect his rights by taking an appeal within the thirty days prescribed, he is barred by the statute from the remedy of appeal.

14. **Computing time.** In computing time the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. Code, section 48, subsection 23.

15. **Discretionary act—weight of.** When the act complained of is of a discretionary character, the action of the board should be sustained, unless it is clearly shown that the board violated law, abused its discretion, or acted with manifest injustice. Decisions, 38, 48, 51, 56.

16. **Choice of remedies.** In certain cases an aggrieved party has a choice of legal remedies. 56 Iowa, 476.

17. **Mandamus.** As an appeal often consumes valuable time, mandamus is sometimes a more speedy as well as a better remedy, to compel the performance of an official duty. Decisions, 14, 34.

18. **Mandatory—mandamus.** Where the law is mandatory in requiring the board to act upon a petition, the remedy for its refusal is mandamus and not appeal. 86 Iowa, 669.

19. **Violation of mandatory law—mandamus.** When a board violates a mandatory requirement, application by an interested party to a court for a writ to compel the board to act as directed by the statute is the more speedy and preferable remedy. 44 Iowa, 432; 50 Iowa, 648, and 71 Iowa, 632. Decisions, 34.

20. **Certiorari.** A writ of certiorari is never used to correct a mere error, but only to test the jurisdiction of the tribunal and the legality of its action. 118 Iowa, 519; 55 Iowa, 215.

21. **When appeal will lie.** That an appeal may lie there must be an order or action by the board. To compel an action, appeal is not the remedy, but application to a court of law. Decisions, 80.

22. **Action of board defined.** By an action of the board is meant a vote taken by it and made of record at a meeting legally constituted. The board may at any time correct mistakes in its record, or supply omissions.

23. **When no appeal.** Appeal cannot be taken where the board simply refuses or neglects to act. 71 Iowa, 632.

24. **Remedy in case of neglect.** In case of wilful neglect or intentional failure to take action as intended by the law, the remedy for any party aggrieved is application to a court for a writ to require the board to consider and act upon the important matter brought to its attention. And its order when made of record will then be subject to be made the basis of an appeal.

25. **Complete record.** If desirable to clear the record, or to make a matter plain beyond question, sometimes the board may re-enact all its former transactions with regard to the matter involved. If it is supposed that the board took an action which purposely was not made a matter of record, it may be compelled by an order of court to complete its record.

26. **Initiatory step—no appeal.** No appeal may be taken from the action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or refusal of the second board is the order from which an appeal may be taken. Note 13 to section 2802.

27. **To lay on table.** An appeal may be taken from an action of the board to lay a petition on the table. Decisions, 88.

28. **Jurisdiction de novo.** In an appeal to the county and state superintendent of public instruction, from the action of the board fixing boundaries, the superintendents have jurisdiction *de novo*, and can enter any order that the board could have made in the matter. 110 Iowa, 652; 95 Iowa, 300; 69 Iowa, 161. For contrary opinion see *Jos. Doubet v. Ind. Dist. Clearfield*, 111 N. W., 326.

29. **Discharge—effect of appeal.** An appeal to the county superintendent settles conclusively the wrongfulness of the teacher's discharge, though such appeal was determined on the ground that plaintiff had not been given a hearing before the board of directors, and not on the merits of the case. 110 Iowa, 313.

30. **Burden of proof.** In a trial before the county superintendent on an appeal from an action of the board discharging a teacher, the burden of proof is on the board. Decisions, 102.

31. **Review of actions of boards.** While the review of the action of a school board with reference to a matter within its jurisdiction is by appeal to the county superintendent, yet the question of whether the board had power to make a certain rule for the government of the schools, can be reviewed by the court in a mandamus proceeding. 129 Iowa, 441.

32. **Discretionary acts—appeal.** When a county superintendent is exercising a discretionary act the courts will not interfere and any abuse of discretion must be remedied on appeal. 110 Iowa, 30. See also 93 Iowa, 269. 107 Iowa, 29, differs.

33. **Notice of appeal—on whom served.** Notice served on the president of the board is held to be sufficient. 113 Iowa, 486.

34. **Expediency—review of.** A question of expediency cannot be reviewed by certiorari. 61 Iowa, 334.

35. **Appeal—when necessary.** Before an action for damages may be maintained, the wrongfulness of the discharge must be determined by appeal. Section 2782, 53 Iowa, 585. See note 29. But the remedy of one discharged on the ground of illegality of contract is by an action in court. 107 Iowa, 29.

36. **Formation of consolidated districts.** The expediency of the formation of a consolidated district out of portions of the territory of other districts with reference to the effect on such other districts is to be determined by the county superintendent on appeal and not by the court which is asked to pass upon the validity of the action of the board to which the petition is directed. *School Dist. Township v. Independent School Dist.*, 149 Iowa, 480; 128 N. W., 848.

37. **Discretion.** Where a discretion is vested in the school board subject only to appeal to the county superintendent and from him to the state superintendent, the courts will not interfere with the exercise of such discretion by mandamus. *Templer v. School Township*, 141 N. W., 1054.

Sec. **2819. Hearing and decision.** The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper school corporation in writing of the taking of such appeal; the latter shall, within ten days after being thus notified, file in the office of the county superintendent a complete transcript of the record and proceedings relating to the decision complained of, which transcript shall be certified to be correct by the secretary; after the filing of the transcript aforesaid the county superintendent shall notify in writing all persons adversely interested of the time and place where the matter of the appeal will be heard by him. At the time fixed for the hearing he shall hear testimony for either party, and he shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided. [C. '73, §§ 1832-4; R., §§ 2136-8.]

Notes: 1. **Notice of appeal.** The notice should describe the decision or order appealed from, so that it may be identified, and should require the district secretary to file the transcript with the superintendent within the time specified. The notice may be served personally or sent by mail.

2. **Secretary's transcript.** The secretary shall make and forward a transcript or copy of the record of all actions of the board relating to the decision or order appealed from; also of all petitions, remonstrances, plats, and other papers pertaining thereto. The original papers must be preserved with the district records.

3. **Basis of appeal.** The basis of an appeal is the recorded action of the board. If the secretary certifies that there is no record of an action by the board in any such matter as is described in the notice for a transcript, then it will be impossible to carry forward the appeal. Notes 22 to 24, section 2818.

4. **Effect of delay in filing transcript.** A failure to file the transcript will not affect the proceedings in any other way than to cause delay. The secretary will take the risk of censure by a court for failure to attend to his official duty. Decisions, 34, Laws of 1907.

5. **Date of hearing.** The time to elapse between the filing of the transcript and the hearing of the appeal is not fixed by the statute. This is left to the county superintendent to determine.

6. **Notice of hearing.** Notice of the time and place of hearing should be given to the appellant, to the secretary of the board, and to any other persons known to be directly interested. The notices may be served personally or sent by mail.

7. **Notice—to whom sent.** The appellant, the president, the secretary of the board, and other parties known to be directly interested, should receive a copy of this notice.

8. **Date of filing—indorsement.** The date of filing every paper should be indorsed thereon; also in the case of motions, orders and rulings of the county superintendent. All oral motions and an abstract of the testimony should be reduced in writing at the time of trial.

9. **Docket.** The docket or minutes of the superintendent should commence by noting the filing of the affidavit. He will afterwards, as the acts transpire, record the sending of the notice of appeal to the district secretary, the filing of the transcript, the sending of notices of the hearing, and any adjournment of the case that may be granted. At the trial he will carefully note down the names of all parties appearing, and their postoffice address, and whether they appear for or against the appeal; also the filing of all papers and names of witnesses, and in whose behalf such papers or witnesses are introduced. The decision of the superintendent will form an appropriate close of his minutes.

10. **Under oath.** All evidence must be given under oath, and the substance reduced to writing at the time by the county superintendent. It is recommended that a summary of what each witness testifies be made, read to the witness, and signed by him. It is of the first importance that the record of the testimony be full and accurate, as the decision of the county superintendent, also of the superintendent of public instruction, in case the appeal is carried up, must be based upon the record of evidence introduced. This testimony should be preserved with the other papers of the case.

11. **Introduction of evidence.** While the county superintendent will not be prevented from entertaining and considering testimony not before the board, the general rule and practice should be no attempt to confine the hearing as far as practicable to the matters considered by the board and to the facts, statements and testimony, that were within the possession of the board at the time the action complained of, which is being reviewed by the county superintendent, was taken.

12. **Preserving order.** In case of disturbance or interruption during the trial of an appeal before a county superintendent, as he is not invested with complete judicial power, he has only the ordinary remedy of complaint to the proper authorities. Code, section 5033.

13. **Call witness.** The county superintendent may upon his own motion call any witness to the stand and have his testimony taken.

14. **Technicalities.** While mere technicalities should not be permitted to prevent the attainment of justice, it is proper that as to evidence and practice the superintendent should be governed by many of the rules which ordinarily obtain in courts.

15. **Question to be determined.** The leading question to be determined by the county superintendent is whether in making the decision or order complained of, the board committed an error to such an extent as to require a reversal.

16. **Discretionary acts—weight of.** Acts of a board purely discretionary in their nature should be given great weight. To warrant a reversal, positive error must be found, and such error must appear clearly in the testimony.

17. **Remanding.** When an appellate tribunal is unable to decide an appeal because the testimony is insufficient or the transcript of the action of the board is incomplete, and the facts are not sufficiently shown to determine what should be done, the case may be remanded for a new trial, or for further action by the board.

18. **Report of decision.** To those interested in the issue of an appeal the county superintendent should send a statement of the result; that is, whether the order of the board was affirmed or reversed.

19. **Stenographer—evidence.** The expense of a stenographer should not be incurred unless the parties to the case provide for defraying it. An abstract of the testimony of each witness should be made and should be signed by him before he is excused. See note 3, section 2821.

20. **Decision—jurisdiction.** Section 2818, notes 27 to 34.

Sec. 2820. **Appeal to state superintendent—no money judgment.** An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction in the same manner as provided in this chapter for taking appeals from the board of a school corporation to the county superintendent, as nearly as applicable, except that thirty days' notice of the appeal shall be given by the appellant to the county superintendent, and also to the adverse party. The decision when made shall be final. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render judgment for money; neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved. [C. '73, §§ 1835-6; R., §§ 2139-40.]

Notes: 1. **Appeals—manner of conducting.** Appeals to the superintendent of public instruction are conducted in the same manner and governed by the same rules, so far as applicable, as appeals to county superintendents. The basis of appeal must be an affidavit filed in the office of the superintendent of public instruction, within thirty days from the date of the decision appealed from.

2. **Notice to county superintendent.** Upon the filing of an affidavit the superintendent of public instruction will notify the county superintendent to forward a transcript of the papers in the case within thirty days. The original papers must be preserved on file in the county superintendent's office.

3. **County superintendent's transcript.** When an appeal is taken to the superintendent of public instruction, the county superintendent must have a copy of the testimony and of his docket prepared. It is very desirable that this transcript should be in typewritten work.

4. **What included.** The transcript of the county superintendent will consist of a literal copy of every paper filed and all indorsements thereon, together with a copy of all testimony given, the whole arranged in chronological order, closing with the decisions of the county superintendent in full, with the certificate annexed.

In filing transcripts, the county superintendent should use care in preparing the papers. They should be uniform in size and typewritten. In case maps and plats are used, they should be brought down to the proper size. All paper used in making a transcript should be 8½ inches by 13 inches. Suitable margins should be left on every sheet. Each question and answer should be fully set out.

5. **Transcript—a copy.** The transcript in an appeal is supposed to be an exact copy of the papers and testimony in the case, preserved on file in the office of the county superintendent. Any one interested may claim the privilege of examining the original records in the case, at any proper time.

6. **Expense of stenographer.** It is obvious that the county superintendent himself should not be expected to pay for having a typewritten transcript of the record made in an appeal to the superintendent of public instruction. Expenses of this character, closely connected by law with the work of the county superintendent's office, should be paid for by the board of supervisors in the same manner that assistance is furnished to other county officers when needed.

7. **Notice.** The law requires that the appellant shall give thirty days' notice to the county superintendent, and also to the adverse party, of the taking of the appeal. This notice should be served as soon as the affidavit of appeal has been filed and proof of such service should be filed with the affidavit. The time for final hearing of the appeal will be fixed by the superintendent of public instruction, and may be at any time after thirty days from the filing of the affidavit.

8. **Appearance.** At the hearing, parties interested may appear personally or by attorney, and argue their cases orally if they desire, or they may send arguments in writing or if possible, in typewriting.

9. **Source of data.** The record of the case in the office of the county superintendent, which is a public record and open to examination by parties interested, will furnish all needed data, where access to transcript sent up is inconvenient.

10. **Original evidence.** The superintendent of public instruction will not hear original testimony in cases submitted to him. Decision, 50.

11. **Revocation of certificate—appeal.** Any person aggrieved by the action of a county superintendent revoking a certificate may appeal to the superintendent of public instruction, provided such appeal is taken within ten days from the mailing of the notice of revocation. Section 2734-u.

12. **Decision—enforcement.** A person in whose favor an appeal is decided has the remedy of a writ of mandamus from a court of law to enforce the decision of appeal. 69 Iowa, 533, and 72 Iowa, 379.

13. **Decision final.** A decision in appeal by a county superintendent or the superintendent of public instruction is final in the sense that no court will attempt to review or set aside such a decision if the matters included are clearly within the jurisdiction of such school officers. 69 Iowa, 533, and 110 Iowa, 652.

14. **When board may take different action.** An appeal decision does not always prevent the board from acting anew upon the matters involved in the appeal. If the order of a board is affirmed the board will be left free to take any action thought best by it; that is, it will have the same freedom to act that it would have if no appeal had been taken.

15. **Mandamus.** Until the board has taken a different action no doubt mandamus will be a remedy to compel the board to carry into effect the appeal decision and the former action of the board.

16. **Remanding.** If it is shown conclusively that a transcript is materially defective, that valuable testimony heard upon the trial before the county superintendent is not included in the transcript, or that testimony which should not have been omitted was excluded, an appeal case may be remanded to the county superintendent for another trial.

17. **Reversing a reversal—effect.** When the decision of the county superintendent on appeal, reversing the order of the board, is reversed by the superintendent of public instruction on the appeal to him, the effect of the last decision, which is final, is to affirm the original order made by the board, and the result of this is to leave the matter as entirely in the hands of the board as though no appeal had ever been taken from its action. Decisions, 48.

18. **Affirming a reversal—effect.** But if the county superintendent reverses an order of the board and the superintendent of public instruction affirms the decision of the county superintendent, such decision will prevent the board from taking any action in the matter until some material change occurs, rendering such a new action necessary. Decisions, 35, 61.

19. **Postage.** Payment for postage in advance will be required with the affidavit. It is impossible to tell what amount of postage will be needed in each case, and one dollar will be required to cover all needed postage. If the dollar does not accompany the affidavit, the filing will be delayed until the amount is received.

20. **Material change of conditions—different action.** A material change of conditions in a corporation may warrant a board of directors in taking action different from that ordered by the county superintendent or superintendent of public instruction on appeal. *Doubet v. Board of Directors*, 111 N. W., 326. See also 70 Iowa, 338. Decisions, 38.

21. **Witnesses—fees.** Section 2821 below.

22. **Change decision.** The state superintendent does not have authority to change his decision as to the proper location of a schoolhouse site on account of change of conditions after the rendering of his decision. *Doubet v. Board of Directors*, 135-95; 111 N. W., 326.

23. **Enforcement of superintendent's decision.** The decision of the state superintendent on an appeal involving the action of a board of directors on a matter as to which such board has exclusive jurisdiction, may be enforced as against the board by mandamus. *State v. Thomas*, 152-500; 132 N. W., 842.

Sec. **2820-d1. Indebtedness authorized in certain districts.** Any independent district containing or contained in any city, town or village, or any consolidated independent district shall be allowed to become indebted, for the purpose of building and furnishing a schoolhouse or houses and procuring a site therefor, or for the purpose of purchasing land to add to a site already owned, to an amount not to exceed in the aggregate, including all other indebtedness, five per centum of the actual value of the taxable property within such independent school district, such value to be ascertained by the last county tax list previous to the incurring of such indebtedness, anything contained in section thirteen hundred and six-b of the supplement to the code, 1907, to the contrary notwithstanding. [35 G. A., ch. 254, § 1; 35 G. A., ch. 10, § 1; 34 G. A., ch. 145, § 1; 33 G. A., ch. 184, § 1.]

[1Substitute continues to § 2820-d5 inclusive. EDITOR.]

Sec. **2820-d2. Petition for election.** Provided, that before such indebtedness can be contracted in excess of one and one-quarter per centum of the actual value of the taxable property ascertained as pro-

vided in this act, a petition signed by a number equal to twenty-five per cent of those voting at the last school election shall be filed with the president of the board of directors, asking that an election shall be called, stating the purpose for which the money is to be used, and that the necessary schoolhouse or houses cannot be built and furnished, or that sufficient land cannot be purchased to add to a site already owned, within the limit of one and one-quarter per centum of the valuation. [35 G. A., ch. 254, § 2; 34 G. A., ch. 145, § 2; 33 G. A., ch. 184, § 2.]

Sec. **2820-d3. Submission of question—notice—ballot.** The president of the board of directors, on receipt of such petition shall, within ten days, call a meeting of the board who shall call such election, fixing the time and place thereof, which may be at the time and place of holding the regular school election. Four weeks' notice of such election shall be given by publication once each week, in some newspaper published in the said town or city, or if none be published therein, in the next nearest town or city in the county. At such election the ballot shall be prepared and used in substantially the following form:

	Yes
	No

Shall the (naming the independent district) issue bonds in the sum of.....dollars ($.....) for the purpose of constructing or equipping schoolhouses? [33 G. A., ch. 184, § 3.]

Sec. **2820-d4. Bonds.** If a majority of all the electors voting at such election vote in favor of the issuance of such bonds, the board of directors shall issue the same and make provision for the payment of the same and the interest thereon as provided in sections twenty-eight hundred twelve-d, twenty-eight hundred twelve-e, twenty-eight hundred twelve-f and twenty-eight hundred thirteen of the supplement to the code, 1907. [33 G. A., ch. 184, § 4.]

Sec. **2820-d5. To what applicable.** But this act shall in no wise affect pending litigation nor act or acts of any school board under the statute or statutes herein repealed; but the transaction, if any, may be completed with the same force and effect as if the statute were not repealed. [33 G. A., ch. 184, § 5.]

Sec. **2820-e. Consolidation authorized.** That in all cities of the first class containing a population of fifty thousand or over, according to any census taken by the authority or under the direction of the state of Iowa or of the United States, all the territory embraced within the corporate limits of any such city may be consolidated into and become one independent school district, known as the independent school district of (naming the city), state of Iowa, in the manner following: [32 G. A., ch. 155, § 1.]

Note: **Districts.** Several school districts may exist wholly or in part within a city or town. *Independent School Dist. v. Jones*, 142-8, 120 N. W. 315.

Sec. 2820-f. **Petition—question submitted—consolidation effected—board of directors—officers.** When a written petition, requesting the establishment of a consolidated independent district whose territory shall be co-extensive with that of such city, signed by one hundred voters of such city, is filed with the board of the school corporation therein having the largest number of voters, it shall be the duty of said board within ten days, to call an election, at which all the voters residing in the proposed district shall be allowed to vote by ballot for or against the proposition, "Shall all the territory within the city of (naming it) be united into one school district?" The board calling said election shall divide the territory within the proposed district into such number of precincts as the board shall determine, and the judges of election shall make and certify a return of the vote to the secretary of the same board which shall, on the next Monday after the election, canvass the returns made to the secretary, ascertain the result of the election, declare the same and cause a record to be made thereof, and in all other respects, except as inconsistent with the provisions of this act, the election shall be conducted as provided by law for elections in independent school districts in cities of the first class. If a majority of the votes cast at such election is favorable to the proposition, the consolidation and formation of said independent district shall thereby be effected, and the board of directors, treasurer, and other officers of the school corporation then holding office in the district affected by such consolidation having the largest number of voters, shall become the board of directors, treasurer and other officers of such consolidated district, and shall continue to hold their respective offices until the terms for which they were originally elected shall expire. The terms of office of all directors, treasurers and officers of boards in all the other districts affected by this act, lying wholly within such consolidated district and holding office at the time of such consolidation, shall cease and determine, and in case of districts lying partly without such consolidated district, the directors, officers and treasurers shall continue to have authority only over the territory lying within their district, and without the consolidated district; provided that nothing herein contained shall affect the terms of employment of superntendents, principals, or teachers for the current school year, in which such consolidation may be effected. [32 G. A., ch. 155, § 2.]

Note 1. **Determining population.** In determining the population of the different districts to be consolidated, the last state census is admissible in evidence, and also the school register prepared under code § 2755. *State v. Grefe*, 139-18, 117 N. W. 13.

2. **Officers.** The provision as to officers of the consolidated district simply indicates those who are to be temporarily in authority, leaving the succession to office as regulated by code supp. § 2802. The new board of directors alone can act in equitably apportioning assets and liabilities. *Ibid.*

Sec. 2820-g. **Taxes.** All taxes previously certified during that year shall be void so far as the property within the limits of the consolidated independent district is concerned. And all taxes necessary for

the new corporation for that year shall be certified and levied as provided in section twenty-seven hundred ninety-six of the code. All property belonging to districts affected by such consolidation shall become the property of the consolidated district, except that in case of districts lying partly without such city, the liabilities and assets of such districts shall be equitably apportioned in accordance with chapter one hundred thirty-six, section thirteen, acts of the thirty-first general assembly, but nothing herein contained shall affect the rights of existing creditors. [32 G. A., ch. 155, § 3.]

Sec. **2820-h. Election expense.** The expense of such election shall be borne by the consolidated district, in case such district shall be formed, otherwise by the separate districts in proportion to the assessed valuation therein within the proposed consolidated district. [32 G. A., ch. 155, § 4.]

Sec. **2821. Witnesses—fees.** The county superintendent in all matters triable before him shall have power to issue subpoenas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the contingent fund of the proper school corporation, upon the certificate of the superintendent to and warrant of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon by him, which shall be collected as other judgments. [First appeared in the code of 1897.]

Notes: 1. **Costs—includes what.** The term costs includes only witness fees and fees to officers for the service of subpoenas. Fees cannot be allowed to any witness unless such witness is subpoenaed by the county superintendent. Decisions, 95.

2. **Filing transcript.** When an appeal is taken from the decision of the county superintendent that officer should not file his transcript of costs with the clerk of courts until the case is finally determined by this department. Bond for costs cannot be required. Decisions, 85.

3. **Stenographer—expense of.** The expenses of a stenographer cannot be taxed as a part of the costs. There is no authority in law to employ a stenographer and tax the expenses of such stenographer as costs in an appeal case. Opinion of attorney-general, 1899.

4. **Rehearing—costs.** Section 2821 does not provide for the payment of costs or expenses in case of a rehearing on the question of issuing a certificate.

Sec. **2822. Penalties.** Any school officer wilfully violating any provision of this chapter, or wilfully failing or refusing to perform any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum

of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein. [C. '73, 1746, 1786; R., §§ 2047, 2081; C. '51, § 1137.]

Sec. 2823. **Provisions apply to all corporations—issuance of bonds.** The provisions of this chapter shall apply alike to all districts, except when otherwise clearly stated, and the power given to one form of corporation, or to a board in one known corporation, shall be exercised by the other in the same manner, as nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation. [First appears in the code of 1897.]

Note: What included. The chapter referred to in this section includes everything contained in the school laws from section 2743 to section 2823-t inclusive.

COMPULSORY ATTENDANCE.

Sec. 2823-a. **Duties of parents and guardians—penalty—exceptions.** Any person having control of any child of the age of seven to sixteen years inclusive, in proper physical and mental condition to attend school, shall cause such child to attend some public, private, or parochial school, where the common school branches of reading, writing, spelling, arithmetic, grammar, geography, physiology, and United States history are taught, or to attend upon equivalent instruction by a competent teacher elsewhere than school, for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date which date shall not be later than the first Monday in December; but the board of school directors in any city of the first or second class may require attendance for the entire time the schools are in session in any school year. Provided that this section shall not apply to any child who lives more than two miles from any school by the nearest traveled road except in those districts in which the pupils are transported at public expense, or who is over the age of fourteen and is regularly employed; or has educational qualifications equal to those[1] of pupils who have completed the eighth grade; or who is excused for sufficient reasons by any court of record or judge thereof; or while attending religious service or receiving religious instructions. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than three dollars nor more than twenty dollars, for each offense. [35 G. A., ch. 255, § 1; 33 G. A., ch. 187, § 1; 33 G. A., ch. 186, § 1; 30 G. A., ch. 116, § 1; 29 G. A., ch. 128, § 1.]

[1"that" in enrolled bill. EDITOR.]

[For provisions respecting children defective in hearing and sight, see §§ 2718-c to 2718-f, inclusive. EDITOR.]

Note: **Seven to sixteen, inclusive—meaning.** The language of the section "to sixteen years" cannot be construed to extend beyond the time when the child becomes fourteen years of age. The word "inclusive" following clearly applies to the time intervening between the ages of seven and fourteen years. * * * I am therefore of the opinion that the word "inclusive," as used in the section, does not extend the period during which a child can be compelled to attend school beyond the time he becomes fourteen years of age. Report of attorney general, 1904, page 95.

Sec. 2823-b. **Reports to secretary.** Upon notice from the secretary of the school corporation within which such school is conducted, it shall be the duty of each principal of each private or parochial school, once during each school year, and at any time when requested in individual cases, and within ten days from the receipt of such notice, to furnish to such secretary a certificate and report of the names, ages and attendance of the pupils in attendance at such school during the preceding year and from the time of the last preceding report to the time at which a report is required and any person having the control of any child between seven and fourteen years of age inclusive, who shall place the same under private instruction, not in a regularly conducted school, upon receiving notice from the secretary of the school corporation, shall furnish a like certificate stating the name and age of such child and the period of time during which said child has been under said private instruction; and any person having the control of such child who is physically or mentally unable to attend school, public or private, shall furnish proofs by affidavit or affidavits as to the physical or mental condition of such child. All such certificates, reports and proofs shall be filed and preserved in the office of the secretary of the school corporation as a part of the records of his office. [29 G. A., ch. 128, § 2.]

Sec. 2823-c. **Certified copies.** It shall be the duty of the secretary of the school corporation to furnish to any person interested, where so requested, certified copies of all certificates contemplated by this act, on file in his office. [29 G. A., ch. 128, § 3.]

Sec. 2823-d. **Truant schools.** The board of directors of any school corporation may establish truant schools, or set apart separate rooms in any public school building, for the instruction of children who are habitually truant from instruction, as contemplated by this act. Such directors may provide for the confinement, maintenance, and instruction of such children in such schools, under such reasonable rules and regulations as they may prescribe. If any child, committed or sent to the truant school shall prove insubordinate and escape from such school during school hours, or absent himself or herself therefrom without the consent of the persons in charge thereof, then it shall be the duty of the person in charge of said school with the consent of the parent or guardian to file information before the judge of a court of record, who may, if the charge be found to be true and the said child be habitually vagrant, disorderly, or incorrigible commit such child to one of the industrial schools of the state, under the same

proceeding as is provided by section twenty-seven hundred eight (2708) of the code so far as the same may be applicable. [29 G. A., ch. 128, § 4.]

Sec. **2823-e. Truant officers.** The board of directors of each school corporation may, and in school corporations having a population of twenty thousand (20,000) or more shall, at their annual meeting in each year, appoint one or more truant officers, who shall serve for one year, and who may be a constable or a member of the police force, whose duty it shall be to report violations of this act to the secretary of the school corporation, and see to the enforcement of the provisions of this act. It shall be the duty of said truant officer or officers to apprehend and take into custody without warrant any child of the age of seven (7) to fourteen (14) years inclusive, who habitually frequents or loiters about public places during school hours without lawful occupation, or cannot produce a certificate as provided in section two (2) hereof, also any truant child who absents himself or herself from school, and place him or her in charge of the teacher having charge of any school, which said child is entitled to attend, and which school may be designated to said officers by the person having legal control of such child. Provided, however, in case the school so designated by the parent or person having the care and control of said child be a public school it shall be such as directed by the rules and regulations of the school board and the statutes of the state, and if other than a public school, the maintenance of said child in such school shall be without expense to the school corporation or state. Upon failure of such child to properly attend or when on report of the teacher having the custody of such child, said child is shown to not properly conduct itself in the school where placed as herein provided, the child may be removed therefrom by the board of directors and placed either in a public school or a truant school conducted in said district. The truant officer or officers shall be entitled to such compensation for service rendered under this act, as shall be fixed by the board of directors appointing him or them, which compensation shall be paid from the contingent fund of said district. In towns and cities of the second class, the independent school district may employ the marshal or other police officer of such city or town to act as truant officer, and pay him a salary in addition to that received from such city or town of not to exceed five ($5.00) dollars per month. [33 G. A., ch. 188; 30 G. A., ch. 116, § 2; 29 G. A., ch. 128, § 5.]

Sec. **2823-f. Enforcement.** It shall be the duty of the director or president of any board of directors, or any truant officers appointed by such board of directors, to enforce the provisions of this act, to sue for and recover the penalties herein provided, and to institute criminal prosecution against any person violating the provisions of this act, and any such officers neglecting to do so within thirty (30) days after a written notice has been served upon him by any citizen of said district or the county superintendent of the county within which the offending

person shall reside, shall himself be liable for a fine of not less than ten ($10) dollars nor more than twenty ($20) dollars for each offense. [32 G. A., ch. 154; 29 G. A., ch. 128, § 6.]

Sec. **2823-g. Teachers and school officers—duties.** All teachers of the public schools of the state, and county superintendents, and school officers and employees shall promptly report to the secretary of the school corporation any violations of the provisions of this act, of which they have knowledge or information, and he shall promptly inform the president of the board of directors thereof, and such president shall, if necessary, call a meeting of the board of directors to take such action thereon as the facts shall justify, and any child placed in any truant school may be discharged therefrom at the discretion of the board, upon sufficient assurance of the future good conduct of such child. [29 G. A., ch. 128, § 7.]

Sec. **2823-h. Provisions for punishment.** The board of directors of every school corporation is hereby authorized to provide such reasonable methods of punishment of children who are habitually truant from school, or who habitually frequent or loiter about public places during school hours, without lawful occupation, as may be necessary to carry out and make effectual the provisions of this act. [29 G. A., ch. 128, § 8.]

Sec. **2823-i. School census.** It shall be the duty of all officers, empowered to take the school census, to ascertain the number of children of the ages of seven to sixteen years, inclusive, in their respective districts, the number of such children who do not attend school, and so far as possible the cause of failure to attend school. [35 G. A., ch. 255, § 2; 29 G. A., ch. 128, § 9.] .

SCHOOL LAWS—SALE.

Sec. **2823-j. Compilation—number—distribution.** The superintendent of public instruction shall every four years, if deemed necessary, cause to be printed, bound and distributed all school laws in force up to that time, the number to be determined by the executive council. Each county superintendent shall be furnished a sufficient number of copies to supply the school officers of the state and such others as may request them. [35 G. A., ch. 256, § 1; 27 G. A., ch. 90, § 1.]

LIBRARIES.

Sec. **2823-n. Library fund.** The treasurer of each school township and each rural independent district in this state shall withhold annually, from the money received from the apportionment for the several school districts, not less than five nor more than fifteen cents, as may be ordered by the board, for each person of school age residing in each school corporation, as shown by the annual report of the secretary, for the purchase of books as hereinafter provided. When so ordered by the board of directors, the provisions of this section shall apply to any independent district. [28 G. A., ch. 23, § 1.]

Notes: 1. **Mandatory.** It is mandatory upon the treasurer in each school township and each rural independent district to withhold from the apportionment each year a certain number of cents for each person between the ages of 5 and 21 years, for the purchase of library books.

2. **Amount withheld.** The amount withheld, annually, for each person, may not exceed fifteen cents, nor be less than five cents. The exact amount per pupil is left to the discretion of the board of directors, and may vary from one year to another. In determining the amount the board should consider the special needs of the district.

3. **Contingent fund.** Under section 2783, the board may use the contingent fund to purchase dictionaries, library books, maps, charts, and apparatus, to an amount not exceeding twenty-five dollars in any one year for each schoolroom under its charge.

4. **When apply to city and town districts.** The provisions of the law apply to independent districts having cities, towns, and villages, only when so ordered by the board of directors. Independent districts without libraries should avail themselves of the benefits of the law.

5. **Schoolhouse fund.** The electors may vote schoolhouse fund for the purchase of library books. Section 2749.

Sec. 2823-o. **Purchase of books—distribution.** Between the third Monday of September and the first day of December in each year the president and secretary of the board, with the assistance of the county superintendent of schools, shall expend all money withheld by the treasurer as provided in section one of this act, in the purchase of books selected from the lists prepared by the state board of educational examiners as hereinafter provided, for the use of the school district; in school townships the secretary shall distribute the books thus selected to the librarians among the several subdistricts, and at least semi-annually collect the same and distribute others. [28 G. A., ch. 110, § 2.]

Notes: 1. **Use of library fund.** The money withheld by the treasurer cannot be used for any purpose except the purchase of books. All expenses such as freight charges, express, postage, exchange, library cases, and record books, should be paid from the contingent fund.

2. **Listing—inspecting.** The county superintendents in visiting schools should carefully inspect the library to see that it is properly kept; that the books are properly listed and labeled, and that the teachers know the best use to make of it.

Sec. 2823-p. **State board of educational examiners to prepare list of books.** It is hereby made the duty of the state board of educational examiners to prepare at its discretion lists of books suitable for use in school district libraries, and furnish copies of such lists to each president, secretary, and each county superintendent, as often as the same shall be published or revised, from which lists the several presidents and secretaries and county superintendents shall select and purchase books. [33 G. A., ch. 189; 28 G. A., ch. 110, § 3.]

Note: **What may be purchased.** It is illegal to purchase books or editions not included in the list recommended by the state board of examiners.

Sec. 2823-q. **Record book.** It shall be the duty of each secretary to keep in a record book, furnished by the board of directors, a complete record of the books purchased and distributed by him. [28 G. A., ch. 110, § 4.]

Sec. **2823-r. Librarian.** Unless the board of directors shall elect some other person, the secretary in independent districts and director in subdistricts in school townships shall act as librarian and shall receive and have the care and custody of the books, and shall loan them to teachers, pupils, and other residents of the district, in accordance with the rules and regulations prescribed by the state board of educational examiners and board of directors. Each librarian shall keep a complete record of the books in a record book furnished by the board of directors. During the periods that the school is in session the library shall be placed in the schoolhouse, and the teacher shall be responsible to the district for its proper care and protection. The board of directors shall have supervision of all books and shall make an equitable distribution thereof among the schools of the corporation. [28 G. A., ch. 110, § 5.]

Notes: 1. **Librarian—duties of.** Much of the success of the library work will depend upon the librarian, and it is urged that great care be taken in making the selection.

2. **Library free.** The library is free to all pupils of suitable age, teachers and residents of the district, and the librarian should loan the books to them in accordance with the rules and regulations prescribed by the state board of educational examiners, and the board of directors.

3. **Where kept.** The library must be kept in the schoolhouse during the term of school. At other times it is placed under the control of the librarian.

4. **Transfer to successor.** Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers, and moneys pertaining or belonging to the office, taking a receipt therefor. Code, section 2770.

VOCAL MUSIC.

Sec. **2823-s. Instruction in vocal music authorized.** That the elements of vocal music, including when practical the singing of simple music by note, be taught in all of the public schools of Iowa, and that all teachers teaching in schools where such instruction is not given by special teachers be required to satisfy the county superintendent of their ability to teach the elements of vocal music in a proper manner. Provided, however, that no teacher shall be refused a certificate or the grade of his or her certificate lowered on account of lack of ability to sing. [28 G. A., ch. 109, § 1.]

Note: **Music required.** For a first grade certificate, section 2734-d; for a second, section 2734-h, note 1; for a third, section 2734-l, note 1.

Sec. **2823-t. Normal institute.** That it shall be the duty of each county superintendent to have taught annually in the normal institute the elements of vocal music. [28 G. A., ch. 109, § 2.]

OF PUBLIC RECREATION AND PLAY GROUNDS.

Sec. **2823-u. Establishment—maintenance—supervision.** Boards of school directors in school districts containing or contained in cities of the first or second class, cities under special charter, or cities under the commission plan of government, are hereby authorized to establish and maintain for children in the public school buildings and on the

public school grounds under the custody and management of such boards, public recreation places and playgrounds and necessary accommodations for same, without charge to the residents of said school district; also to co-operate with the commissioners or boards having the custody and management in such cities of public parks and public buildings and grounds of whatever sort, and by making arrangements satisfactory to such boards controlling public parks and grounds to provide for the supervision, instruction and oversight necessary to carry on public educational and recreational activities, as described in this section in buildings and upon grounds in the custody and under the management of such commissioners or boards having charge of public parks and public buildings on grounds of whatever sort, in such cities of the first or second class, cities under special charter, or cities under commission plan of government. [35 G. A., ch. 257, § 1.]

Sec. **2823-u1. Tax levy—petition—submission.** The board of directors of any school district containing, or contained in, any city of the first or second class, city under special charter, or city under the commission plan of government, may, and upon petition to that effect signed by legally qualified voters aggregating not less than twenty-five per cent of the number voting at the last preceding school election, shall submit to the electors of such school district the question of levying a tax as in this act provided; and if a majority of the votes cast upon such proposition be in favor thereof, then the board of school directors shall proceed to organize the work as authorized in this act and levy a tax therefor at the time and in the manner provided in section 3 of this act. If at the time of filing said petition it shall be more than three months till the next regular school election, then the board of school directors shall submit said question at a special election within sixty days. [35 G. A., ch. 257, § 2.]

Sec. **2823-u2. Certification to board of supervisors—collection—limitation.** Boards of school directors in such districts shall fix and certify to the board of supervisors on or before the first Monday of September the amount of money required for the next fiscal year for the support of the aforementioned activities, in the same manner as the amount of necessary taxes for other school purposes is certified and said board of supervisors shall levy and collect a tax upon all the property subject to taxation in said school district at the same time and in the same manner as other taxes are levied and collected by law which shall be equal to the amount of money so required for such purposes by the said board of school directors as provided in this act; provided that the tax so levied upon each dollar of the assessed valuation of all property, real and personal in said district, subject to taxation, shall not in any one year exceed two mills for the purpose of the activities hereinbefore mentioned in this act; the said tax shall not be used or appropriated directly or indirectly for any other purpose than provided in this act. [35 G. A., ch. 257, § 3.]

Sec. 2823-u3. **Duties of school treasurer.** All moneys received by, or raised in such city for the aforementioned purpose shall be paid over to the treasurer of the school district, to be disbursed by him on orders of such board of school directors in such district in the same manner as other funds of said school district are disbursed by him, but the tax provided for in this act shall not be levied or collected nor shall the board of school directors, as provided in this act, have authority to certify the amount of taxes necessary for this purpose until after the question of the levy of such tax shall have been authorized by a majority vote at a regular or special election. [35 G. A., ch. 257, § 4.]

Sec. 2823-u4. **Annual levy.** After the question of the levy of such special tax has been submitted to and approved by the voters as provided in this act, the authority shall remain, and such tax shall be levied and collected annually until such time as the voters of the school district of such city shall by majority vote order the discontinuance of the levy and collection of such tax. [35 G. A., ch. 257, § 5.]

Sec. 2823-u5. **Discontinuance of levy—submission of question.** The board of school directors in any district governed by this act, may, and on petition to that effect signed by legally qualified voters aggregating not less than twenty-five per cent of the number voting at the last preceding school election, shall submit to the electors of such school district the question of discontinuing the levying of such tax as may have been previously authorized under the provisions of this act, and if a majority of the votes cast upon such proposition be in favor thereof, then the levying of such tax shall be discontinued and shall not be resumed unless again authorized under the provisions of section two of this act. [35 G. A., ch. 257, § 6.]

Sec. 2823-u6. **Appropriation by city.** The board of school directors in any district governed by this act is also empowered to receive and expend for the purpose of this act, any sums of money appropriated and turned over to them by the city council or commissioners of such city for such purposes; and the city council or commissioners of such city, shall have authority to appropriate and turn over to the board of school directors of the school district containing or contained in such city, any reasonable sums of money which the said council or commissioners may desire to appropriate out of the general funds of such city and turn over to the said board of school directors for the purposes herein set forth. [35 G. A., ch. 257, § 7.]

Sec. 2823-u7. **Power to acquire land for school garden or farm—summer home—objects and purposes.** The school board in cities including cities under special charters and commission form, having a population of twenty thousand or more, is hereby empowered to purchase or lease for educational purposes a tract of land outside of the boundaries of such city, for a school garden or school farm in like manner and under the same restrictions as in the case of school property in the said city and to erect suitable buildings thereon, and to furnish the same, and to appoint managers in a suitable manner. The

said tract of land to be maintained for the purpose of providing a summer home for pupils of the city who may desire to continue their study all the year round, and for supplying to them an opportunity to perform productive work in such vocational lines as agronomy, olericulture, viticulture, apiculture, pomology, agriculture, and the auxiliary arts, carpentry masonry and any other wholesome and voluntary employment and to diversify such work with open air exercises and recreations of both physical and intellectual character; also for enabling the pupils of the elementary schools and of the high school opportunities for visitation and observational study at all seasons in connection with their school work; it being the intent and purpose of this statute to develop in the state of Iowa the educational principle and work commonly comprised in the name "Park Life," as exemplified experimentally and discussed educationally and sociologically in this state.

Where such school garden or school farm is maintained, the said school board shall seek to correlate its functions with the regular work of the schools in the most practical and efficient manner. [36 G. A., H. F. 524, § 1.]

TEXT BOOKS—ADOPTION—PURCHASE—LOANING.

Sec. 2824. **Adoption—contract—agent.** The board of directors of each and every school corporation in the state of Iowa is hereby authorized and empowered to adopt text-books for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, and said money so received shall be returned to the contingent fund. The books and supplies so purchased shall be under the charge of the board, who may select one or more persons within the county to keep said books and supplies for sale, and, to insure the safety of the books and moneys, the board shall require of each person so appointed a bond in such sum as may seem to the board to be desirable. [25 G. A., ch. 35; 23 G. A., ch. 24, §§ 1, 2.]

Notes: 1. **Term of contract.** There is nothing in this and the following sections from which it can be inferred that a contract must be entered into for five years. The law does not attempt to fix an exact limitation as to the time for which a contract should be made. It seems to be the intent of the law that the board of directors or the county board of education should carefully avoid making a contract which might have the effect of binding its successors in office.

2. **Books must be used.** It is within the power of any board to forbid the use of other books than those adopted for the district, and to provide by rule or regulation that scholars persistently and continuously refusing to conform to such regulation shall be refused instruction until they comply with the rule. Teachers failing to regard a rule or direction of the board that instruction be given from no other books than those legally in use, take the risk of being cited for trial under section 2782.

3. **Cost—how construed.** The word cost, in this section, should be understood to mean contract price. Any extra expense connected with securing the books should not be added to their purchase price, but should be paid from the contingent fund, upon separate orders. In this way the cost to the purchaser will agree with the contract price, and uniformity in cost for the same book will obtain all over a large district having several selling places, and will also be common in many districts and counties, while the extra expense for handling, drayage, storage, etc., may differ somewhat in connection with each different person selected to keep the books for sale.

4. **Other necessary school supplies.** We think the words any and all other necessary school supplies are intended to include only such articles as it is customary for parents to purchase for the use of their children in school work. For instance, globes and charts have not been furnished by the children. They cannot be bought with the money of the district, resold, and the money returned to the contingent fund as directed by the law.

5. **Text-books included.** Text-books of every variety, in all classes and grades, and all kinds of supplies usually purchased by the children for use in the schools for the purpose of instruction, may be purchased under this act.

6. **Responsibility of board.** It is evidently not the intention to impose a hardship upon the person who keeps the books and supplies for sale, but simply to guard the district against possible loss. The board is not to be considered as released in the slightest degree from its obligation, under the general law, to protect the funds. The bond is required for additional protection. Nor will the fact that the board requires a bond from another person in any way release the treasurer from his absolute responsibility for all funds of the district coming into his hands, from whatever source.

7. **Contracts made conditional.** In order to avoid a possible misunderstanding, every contract should be made subject to the action of the electors as provided for in section 2829.

8. It is illegal for any school board (city, town, rural independent or township) to select text-books or award contracts for text-books without: first, authority from the electors of their district to whom the question has been duly submitted; second, advertisement for bids. See *McNees v. School Township of East River, Page County*, 133 Iowa, 120.

Sec. **2825. Use of contingent fund—additional tax.** All the books and other supplies purchased under the provisions of this chapter shall be paid for out of the contingent fund, and the board of directors shall annually certify to the board of supervisors the additional amount necessary to levy for the contingent fund of said district to pay for such books and supplies. But such additional amount shall not exceed in any one year the sum of one dollar and fifty cents for each pupil residing in the school corporation, and the amount so levied shall be paid out on warrants drawn for the payment of books and supplies only, but the district shall contract no debt for that purpose. [25 G. A., ch. 35; 23 G. A., ch. 24, § 2.]

Notes: 1. **Contingent fund—use of.** Any contingent fund on hand may be used to purchase books and supplies. As the proceeds from sales must be returned at once to the contingent fund, no large additional amount will ordinarily be needed to enable the average district to secure books and supplies under this law.

2. **Contingent fund—estimated for.** When the board is estimating the levy for the contingent fund, it may include in the estimate an amount needed to pay any necessary expenses connected with securing the books.

3. **Orders audited.** All payments under this chapter must be made in strict accordance with the other provisions of law governing the disbursement of school moneys. No order for any purpose may be drawn until the account has been regularly audited by the board. Section 2780.

4. **Price to pupils.** It is desirable that the cost to the scholar shall be the lowest possible. Any extra expense connected with securing the books should not be added to their purchase price, but should be paid out of the contingent fund, upon separate orders. In this way the cost to the purchaser will agree with the contract price, and uniformity in cost for the same book will be common in many districts and counties. Note 3 to section 2824.

5. **Anticipate taxes.** While the district may contract no indebtedness for the purchase of books and supplies, the board may anticipate the levy and collection of taxes certified for those purposes.

Sec. **2826. Purchase—exchange.** In the purchasing of text-books it shall be the duty of the board of directors or the county board of education to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted. [25 G. A., ch. 35; 23 G. A., ch. 24, § 3.]

Note: **Uniformity of books.** The good of the schools will be best advanced if it is ordered that the same book or books in any branch must be used in all the schools of the same grade in the district. This will simplify the purchase, and also facilitate the introduction of uniform books.

Sec. **2827. Suit on bond.** If at any time the publishers of such books as shall have been adopted by any board of directors or county board of education shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this chapter, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, then said board of directors or county board of education may and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher. [25 G. A., ch. 35; 23 G. A., ch. 24, § 4.]

Sec. **2828. Bids.** Before purchasing text-books under the provisions of this chapter, it shall be the duty of the board of directors, or county board of education, to advertise, by publishing a notice once each week for three consecutive weeks in one or more newspapers published in the county; said notice shall state the time up to which all bids will be received; the classes and grades for which text-books and other necessary supplies are to be bought, and the approximate quantity needed; and said board shall award the contract for said text-books and supplies to any responsible bidder or bidders offering suitable text-books and supplies at the lowest prices, taking into consideration the quality of material used, illustrations, binding, and all other things that go to make up a desirable text-book; and may, to the end that they may be fully advised, consult the county superintendent, or, in case of city independent districts, with city superintendent or other competent person, with reference to the selection of text-

books: Provided, that the board may reject any and all bids, or any part thereof, and readvertise therefor as above provided. [31 G. A., ch. 9, § 4; 25 G. A., ch. 35; 23 G. A., ch. 24, § 5.]

Note: **Must advertise.** A board may not secure the advantages of purchasing text-books without first advertising for bids and letting the contract in the manner required. And this is equally true even if it is expected that a new contract will be made for the books in present use. 133 Iowa, 120.

Sec. 2829. **Change—question submitted.** It shall be unlawful for any board of directors or county board of education, except as provided in section twenty-eight hundred and twenty-seven of this chapter, to displace or change any text-book that has been regularly adopted or re-adopted under the provisions of this chapter, before the expiration of five years from the date of such adoption or re-adoption, unless authorized to do so by a majority of the electors present and voting at their regular annual meeting in March, due notice of said proposition to change or displace said text-books having been included in the notice for the said regular meeting. [25 G. A., ch. 35; 23 G. A., ch. 24, § 6.]

Note: **Notice—secretary must be directed.** Where notice that the question of a change of text-books would be voted on was included in the notice of election by the clerk (secretary) without the action of the board, the vote thereon was invalid, though a petition of ten voters had been filed, and though the members of the board individually had authorized the action of the clerk (secretary). *McNees v. School Township of East River, Page County,* 133 Iowa, 120.

Sec. 2830. **Samples—lists—bonds.** Any person or firm desiring to furnish books or supplies under this chapter in any county shall, at or before the time of filing his bid hereunder, deposit in the office of the county superintendent samples of all text-books included in his bid, accompanied with lists giving the lowest wholesale and contract prices for the same. And said samples and lists shall remain in the county superintendent's office, and shall be delivered by him to his successor in office, and shall be kept by him in such safe and convenient manner as to be open at all times to the inspection of such school officers, school patrons and school teachers as may desire to examine the same and compare them with others, for the purpose of use in the public schools. The board of directors and the county board of education mentioned shall require of any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond, in such sum and with such conditions and sureties as may be required by such board of directors or county board of education, for the faithful performance of any such contract. But bonds of surety companies duly authorized under the laws of Iowa shall be accepted. [25 G. A., ch. 35; 23 G. A., ch. 24, § 7.]

Sec. 2831. **County board of education—question as to county uniformity.** The county superintendent, the county auditor and the members of the board of supervisors shall constitute a county board of education. When petitions shall have been signed by one-third the school

directors in any county, other than those in cities and towns, and filed in the office of the county superintendent of such county at least thirty days before the annual school elections, asking for a uniform series of text-books in the county, then such county superintendent shall immediately notify the other members of the county board of education in writing, and within fifteen days after the filing of the petitions said board of education shall meet and provide for submitting to the electors at the next annual meeting the question of county uniformity of school text-books. [28 G. A., ch. 111; 25 G. A., ch. 35; 23 G. A., ch. 24, §§ 8, 9.]

Notes: 1. **Petition.** It is intended that at least one-third of the individuals composing all boards, except those of city and town districts, shall sign the petition referred to.

2. **County board of education.** By the provisions of this section every county in the state has a county board of education composed of the county superintendent, county auditor, and members of the board of supervisors.

3. **Notice.** In order that every voter may be fully advised of the submission of the question of county uniformity, the county board of education should publish the proposition to be voted upon in the official papers of the county at least ten days before the annual school election, and they should also transmit to the secretaries of the several boards of directors copies of said proposition, and direct said secretaries to give notice thereof and provide for the taking of a vote thereon at the annual meeting.

Sec. 2832. **Selection of books—depositories.** Should a majority of the electors voting at such elections favor a uniform series of text-books for use in said county, then the county board of education shall meet and select the school text-books for the entire county, and contract for the same under such rules and regulations as the said board of education may adopt. When a list of text-books has been so selected, they shall be used by all the public schools of said county, except as hereinafter provided, and the board of education may arrange for such depositories as it may deem best, and may pay for said school books out of the county funds, and sell them to the school districts at the same price as provided for in section twenty-eight hundred and twenty-four of this chapter, and the money received from said sales shall be returned to the county funds by said board of education monthly. The boards of school officers, who are hereby made the judges of the school meetings, shall certify to the board of supervisors the full returns of the votes cast at said meetings the next day after the holding of said meetings, who shall, at their next regular meeting, proceed to canvass said votes and declare the result. Unless otherswise ordered by the board of education, the county superintendent shall have charge of such text-books and of the distribution thereof among the depositories selected by the board; he shall render to the board at each meeting thereof itemized accounts of his doings, and shall be liable on his official bond therefor. [28 G. A., ch. 112; 25 G. A., ch. 35; 23 G. A., ch. 24, § 9.]

Notes: 1. **A continuous body.** The county board of education is a continuous body.

2. **Rules.** County boards of education should from time to time make such rules and regulations as seem necessary to carry out the purpose and spirit of the law.

3. **May not be purchased.** Purchases of records, dictionaries, apparatus and similar supplies for the use of the district may not be made by contract under this law, but such articles should be bought with contingent fund, as provided by section 2783. Note 4 to section 2824.

4. **Sold direct.** The county board of education must cause the books to be sold to the people direct, under such regulations as the board may adopt.

5. **Must be used.** When a list of text-books has been selected as provided in this section, they must be used by all the public schools of said county, except as provided in section 2835, notwithstanding the fact that contracts made by boards of school corporations may not have expired.

6. **Bonds.** Security by bond made payable to the county may be required from depositories. But the fact that the money from sales must be returned to the county funds monthly will lessen the need for as much security as would be necessary if a large sum of money could be held by a depository for a long time.

7. **Depositories.** The county board of education should arrange for a sufficient number of depositories to accommodate fully the people of every district in the county.

8. **Contingent expense.** It will promote an equality of price for the same book in the several counties, if any slight extra expense connected with securing or handling the books be not added to the contract price, but paid for from the county funds, by the board of supervisors. In this way, the books and supplies may be sold to the people at cost, the same as provided under section 2824, when purchase is made by a district. Note 4 to section 2825.

9. **May not render opinions.** It is apparent that there will be many questions arising upon which we cannot venture an opinion. Any matter in which the binding force or validity of a contract is involved, can be determined only by the courts of law.

10. **Legal adviser.** The county attorney is the legal adviser of the county board of education, and he should be freely consulted on questions upon which the board may be in doubt. Code, section 302.

11. **By ballot.** The vote upon county uniformity must be by ballot. The result of such vote should be duly certified by the judges of election to the board of supervisors the next day after the annual meeting.

12. **Directors not agents.** The statute prohibits any school director from engaging on his own account in the sale of schoolbooks and supplies to pupils, and the prohibition is not limited to directors acting as agents of the board under code § 2824. *State v. Wick*, 130 Iowa, 31; 106 N. W., 268.

13. **Judges.** "The boards of school officers" who are made the judges of election by this section consist of the president, the secretary, and one of the directors as provided for in section 2746.

14. **Printing ballots.** In order to facilitate matters in holding this election, the board of education might very properly provide for the printing and distribution of ballots, and make such other arrangements as may be necessary.

15. **Board may not contract with book sellers.** A school board has no authority to contract with a book seller and pay him out of the contingent fund for handling school books. 127 Iowa, 408.

Sec. 2833. **Proceedings of county board.** The county superintendent shall in all cases be chairman of the county board of education, and the county auditor shall be the secretary, and a full and complete record shall be kept of their proceedings in a book kept for that purpose in the office of the county superintendent. A list of text-books so selected, with their contract prices, shall be reported to the state

superintendent with the regular annual report of the county superintendent. [25 G. A., ch. 35; 23 G. A., ch. 24, § 10.]

Note: **Who report.** The county superintendent will report only the list of books adopted by the county board of education. The superintendents of counties that have not adopted county uniformity as provided in sections 2831 and 2832 will not make this report.

Sec. **2834. Officers not to be agents.** It shall be unlawful for any school director, teacher, or member of the county board of education to act as agent for any school text-books or school supplies during such term of office or employment, and any school director, officer, teacher or member of the county board of education who shall act as agent or dealer in school text-books or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution. [25 G. A., ch. 35; 23 G. A., ch. 24, § 11.]

Notes: 1. **Purpose of the law.** The intention of this section is to prohibit any of the persons named from engaging in any business in connection with school text-books or supplies, by which his pecuniary interests might be brought in conflict with his official duties.

2. **Violation—effect.** The fact that a person is subject to the penalties named, for violating the provisions of this section, will not operate to deprive him of his office or position.

3. **Who prohibited.** School directors, teachers, and members of the county board of education are by this section absolutely prohibited from acting as agents for, or dealers in, school text-books or school supplies.

4. **Director as dealer.** Code, section 2834, applies to and prohibits a school director from engaging on his own account in the sale of school books and supplies to the pupils, and is not limited to directors acting as agents of the board under code, section 2824. 130 Iowa, 31.

5. **Sale of books—use of contingent fund.** A school board has no authority to contract with a bookseller and pay him out of the contingent fund for handling books, where the district does not buy the books for re-sale, but simply arranges with the publishers to place the same with the dealer to be sold by him at a stated price. 127 Iowa, 408.

Sec. **2835. City schools.** The provisions of sections twenty-eight hundred and thirty-one, twenty-eight hundred and thirty-two and twenty-eight hundred and thirty-three of this chapter shall not apply to schools located within cities or towns, nor shall the electors of said cities or towns vote upon the question of county uniformity; but nothing herein shall be so construed as to prevent such schools in said cities and towns from adopting and buying the books adopted by the county board of education at the prices fixed by them, if by a vote of the electors they shall so decide. [25 G. A., ch. 35; 23 G. A., ch. 24, § 12.]

Notes: 1. **Apply to whom.** All except sections 2831, 2832 and 2833 apply to city and town independent school districts, and such districts may purchase books and supplies in the same manner as other districts, under sections 2824 to 2830.

2. **How adopt.** City and town independent districts may by a vote of the electors, at a regular meeting or at a special meeting called for that purpose, decide to adopt and use the books adopted by the county board of education.

Sec. 2836. **Free text-books—question submitted.** Whenever a petition signed by one-third or more of the legal voters, to be determined by the school board of any school corporation, shall be filed with the secretary thirty days or more before the annual meeting of the electors, asking that the question of providing free text-books for the use of pupils in the public schools thereof be submitted to the voters at the next annual meeting, he shall cause notice of such proposition to be given in the call for such meeting. [26 G. A., ch. 37, § 1.]

Notes: 1. **Purpose—benefits.** These provisions afford all school corporations the opportunity to supply free books, so that every child may continuously enjoy the privileges of school. It is believed that if districts will take action in accordance with the spirit of the law, the percentage of attendance at school can be materially increased, and the usefulness of our schools to all the children greatly enhanced.

2. **Rules—importance of.** Much of the success of free text-books will depend upon the rules and regulations adopted by the board to govern the use and care of such books. The board should take more than the usual pains to adopt plain, comprehensive, and effective rules for the guidance of all concerned.

Sec. 2837. **Loaning—discontinuance.** If, at such meeting, a majority of the legal voters present and voting by ballot thereon shall authorize the board of directors of said school corporation to loan textbooks to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of text-books, and loan them to the pupils. The board shall hold pupils responsible for any damage to, loss of, or failure to return any such books, and shall adopt such rules and regulations as may be reasonable and necessary for the keeping and preservation thereof. Any pupil shall be allowed to purchase any text-book used in the school at cost. No pupil already supplied with text-books shall be supplied with others without charge until needed. The electors may, at any election called as provided in the last section, direct the board to discontinue the loaning of text-books to pupils. [26 G. A., ch. 37, §§ 2-6.]

Notes: 1. **Success of.** As much of the success of free text-books will depend upon the rules and regulations adopted by the board to govern the care and use of the books, a board should take more than the usual pains to adopt plain, comprehensive, and effective rules for the guidance of all concerned.

2. **Anticipate tax.** While the district may contract no debt for the purchase of books, the board may anticipate the levy and collection of taxes certified under section 2825, so as to carry out the instructions of the electors without unnecessary delay.

Sec. 5028-s. **What prohibited.** That no bills, posters or other matters used to advertise the sales of intoxicating liquors and tobacco shall be distributed, posted, painted or maintained within four hundred feet of premises occupied by a public school or used for school

purposes, provided, however, that nothing in this act contained shall apply to advertisements in newspapers of regular publications distributed to subscribers or purchasers thereof. [30 G. A., ch. 137, § 1.]

Sec. **5028-t. Penalty.** Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [30 G. A., ch. 137, § 2.]

REQUESTS—CORPORATIONS MAY RECEIVE.

Sec. **740. Power to take property by gift or bequest—how administered.** Counties, cities, towns and school corporations, are authorized to take and hold property, real and personal, derived by gifts and bequests; and to administer the same through their proper officers in pursuance of the terms of the gift or bequest; and when made for the establishment of institutions of learning or benevolence, and there is no provisions made in the gift or bequest for the execution of the trust, the court having charge of the probate proceedings in the county shall appoint three trustees, residents of said county, who shall have charge and control the same, and who shall continue to act until removed by the court. And they shall give bond as required in case of executors, to be approved in the same manner as in case of executors' bonds, and said trustees shall be subject to the orders of said court. [28 G. A., ch. 23, § 1; 26 G. A., ch. 20.]

Sec. **1306-b. Amount of indebtedness limited.** That section thirteen hundred and six-b of the supplement to the code (1902) and chapter forty-three of the acts of the thirtieth general assembly be and the same are hereby repealed, and the following enacted in lieu thereof:

"No county or other political or municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount exceedng in the aggregate the amount of one and one-fourth per centum of the actual value of the taxable property within such county or corporation, except that cities and incorporated towns may for the purpose of purchasing, erecting, extending or maintaining and operating waterworks, electric light and power plants, gasworks and heating plants or of building and constructing sewers, incur an indebtedness, not exceeding in the aggregate, added to all other indebtedness, five per centum of the actual value of the taxable property within such city or incorporated town. The amount of such taxable property shall be ascertained by the last state and county tax list previous to the incurring of such indebtedness." [33 G. A., ch. 82, § 1; 31 G. A., ch. 49, § 1; 30 G. A., ch. 43; 28 G. A., ch. 41, § 2.]

Notes: 1. **For additional indebtedness.** See sections 2820-a to 2820-d, below.

2. **Warrants in excess of limit—action on.** Either a school district or intervening tax-payers may, where the officers refuse to act, defend an action to recover on warrants of the district on the ground that the same are in excess of the constitutional limitation, although the officers of the district acted in good faith in creating the debt for which the warrants were issued, and still recognize their validity. 122 Iowa, 99.

OF COUNTY HIGH SCHOOLS.

Sec. 2728. **How established.** Any county may establish a high school in the following manner: When the board of supervisors shall be presented with a petition signed by one-third of the electors of the county as shown by the returns of the last preceding election, requesting the establishment of a county high school at a place in the county named therein, it shall submit the question together with the amount of tax to be levied to erect the necessary buildings, at the next general election to be held in the county, or at a special one called for that purpose, first giving twenty days' notice thereof in one or more newspapers published in the county, if any be published therein, and by posting such notice, written or printed, in each township of the county, at which election the vote shall be by ballot, for or against establishing the high school, and for or against the levying of the tax, the vote to be canvassed in the same manner as that for county officers. Should a majority of all the votes cast upon the question be in favor of establishing such school, and the levying of such tax, the board of supervisors shall at once appoint six trustees, residents of the county, not more than two from the same township, who, with the county superintendent of common schools as president, shall constitute a board of trustees for said high school. [27 G. A., ch. 84, § 1; C. '73, §§ 1697-9, 1701.]

The provisions of code § 2803 relating to tuition for pupils attending school in another district than that in which they reside, have no application to county high schools organized under this section. *Boggs v. School Township*, 128-15, 102 N. W. 796.

Sec. 2729. **Trustees—officers.** The trustees, within ten days after appointment, shall qualify by taking the oath of civil officers, and giving bond in such sum as the board of supervisors may require, with sureties to be approved by it, and shall hold office until their successors are elected and qualified, who shall be elected at the general election following. The trustees then elected shall be divided into two classes of three each and hold their office two and four years respectively, their several terms to be decided by lot; and in all county high schools heretofore established the terms of all trustees therefor shall expire on the first day of January, nineteen hundred and seven, and at the general election in nineteen hundred and six there shall be six trustees elected for each of said county high schools, three of whom shall be elected for two years, and three of whom for four years, and at each general election thereafter three trustees shall be elected for the term of four years, the trustees so elected to qualify in the same manner and at the same time as other county officers and all vacancies occurring to be filled by appointment by the board of supervisors, the appointee to hold the office until the next general election, and a majority of which trustees shall constitute a quorum for the transaction of business. At the first meeting held in each year, the board shall appoint a secretary and treasurer from their own number, who shall perform the usual duties devolving

upon like officers. The treasurer, in addition to his bond as trustee, shall give one as treasurer, in such sum and with such sureties as may be fixed by the board, and receive all moneys from all sources belonging to the funds of the school, and pay them out as directed by the board of trustees, upon orders drawn by the president and countersigned by the secretary; both of which officers shall keep an accurate account of all moneys received and paid out, and at the close of each year, and whenever required by the board, shall make a full itemized and detailed report. [31 G. A., ch. 135; C. '73, §§ 1699, 1700, 1704, 1711.]

Sec. 2730. **Site—tax—approval of electors.** As soon as convenient after the organization of the board, it shall proceed to select the best site that can be obtained without expense to the county, at the place named in the petition upon which the vote was taken, for the erection of the necessary school buildings, the title to be taken in the name of the county, and shall procure plans and specifications for the erection of such buildings, and make all necessary contracts for the erection of the same, the cost of which, when completed, shall not exceed the amount of the tax so levied therefor. They shall also annually make and certify to the board of supervisors on or before the first Monday of September of each year, an estimate of the amount of funds needed for improvements, teachers' wages and contingent expenses for the ensuing year, designating the amount for each, which, in the aggregate shall not exceed in any one year, one mill on the dollar, upon the taxable property of the county. No expenditures for buildings or other improvements shall be made, or contract entered into therefor, by said board, involving an outlay of to exceed five hundred dollars in any one year, without the same first being submitted to the electors of the county in which said school be located, for their approval; the tax to be levied and collected in the same manner as other county taxes, and paid over by the county treasurer in the same manner as school funds are paid to district treasurers. [36 G. A., H. F. 587, § 1; 27 G. A., ch. 84, § 2; C. '73, §§ 1702-3, 1705.]

Sec. 2731. **Management.** Said board shall make no purchases, nor enter into any contracts in any year, in excess of the funds on hand and to be raised by the levy of that year. It shall employ, when suitable buildings have been furnished, a competent principal teacher to take charge of the school, and such assistant teachers as may be necessary, and fix the salaries to be paid them, and in the conduct of the school may employ advanced students to assist in the work. Annual reports shall be made by the secretary to the board of supervisors, which report shall give the number of students, with the sex of each, who have been in attendance during the year, the branches taught, the textbooks used, number of teachers employed, salary paid to each, amount expended for library, apparatus, buildings, and all other expenses, the amount of funds on hand, debts contracted, and such other information as may be deemed important, and this report

shall be printed in at least one newspaper in the county, if any is published therein, and a copy forwarded to the superintendent of public instruction. And for their services the trustees shall each receive the sum of two dollars per day for the time actually employed in the discharge of official duties, claims for services to be presented, audited, and paid out of the county treasury, in the same manner as other accounts against the county. [27 G. A., ch. 84, § 3; C. '73, §§ 1705-6, 1710, 1712.]

Sec. 2732. **Regulations.** The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as is deemed proper in regard to the studies, conduct and government of the pupils, and such rules and regulations shall prohibit the use of tobacco in any form by any student of such school; and any pupil who will not conform to and obey such rules may be suspended or expelled therefrom by the board of trustees. Said board of trustees shall make all necessary rules and regulations in regard to the age and grade of attainments necessary to entitle pupils to admission into the school, and shall on or before the tenth day of July of each year make an apportionment between the different school corporations of the county, of the pupils that shall attend said school, and shall apportion to each of said school corporations its proportionate number, based upon the number of pupils that can be reasonably accommodated in said school, and the number of pupils of school age, actual residents of such school corporations, as shown by the county superintendent's report last filed with the county auditor of said county; said apportionment shall be published in the official papers of such county, to be paid for as other county printing; pupils from said school corporations to the number so designated in such apportionment shall be entitled to admission into said school, tuition free, and none others, and it shall be unlawful to accredit pupils so attending to any other school corporation than the one in which they are enumerated for school purposes. Should there be more applicants for such admission from any school corporation than its proportionate number, so determined, then the board of directors of such school corporation shall designate which of said applicants shall be entitled to so attend. If the school shall be capable of accommodating more pupils than those attending under such apportionment, others may be admitted by the board of trustees, preference at all times being given to pupils desiring such admission, who are residents of the county. The board of trustees shall fix reasonable tuition for such pupils. If such pupils are residents of the county the school corporation from which they attend shall pay their tuition out of its contingent fund. The principal of such high school shall report to the said board of trustees under oath, at the close of each term, the names and number of pupils attending such school during said term, from what school corporation they attended, and the amount of tuition, if any, paid by each, the same to be included in the annual report of the secretary of the board of trustees to the board of super-

visors, provided for in section twenty-seven hundred thirty-one of the code, the tuition so paid to be turned over to the treasurer of the board of trustees to be used in paying the expense of said school under the direction of said board. [35 G. A., ch. 241, § 1; 27 G. A., ch. 84, § 4; C. '73, § 1709.]

The legislature may provide for the establishment and maintenance of county high schools and require the payment of tuition for pupils attending from any one district in excess of the number allotted to such district. *Boggs v. School Township*, 128-15, 102 N. W. 796.

Sec. **2733-a. Petitions to abolish—election.** Whenever citizens of any county having a county high school desire to abolish the same or to dispose of any part of the buildings or property thereof, they may petition the board of supervisors at any regular session thereof in relation thereto, and sections three hundred ninety-seven, three hundred ninety-eight, three hundred ninety-nine and four hundred of the code shall apply to and govern the whole matter, including the manner of presenting and determining the sufficiency of such petitions and remonstrances thereto, so far as applicable. If an election is ordered the same shall be held at the time of the general election or at a special election called for that purpose and the proposition shall be submitted and the election conducted in the manner provided in title six of the code. If any proposition as herein provided be legally submitted and adopted, the board of supervisors is hereby empowered to carry the same into effect. [27 G. A., ch. 84, § 5.]

Sec. **1072. County officers—election of county superintendent of schools by convention.** That section ten hundred seventy-two of the code be and the same is hereby repealed, and the following enacted in lieu thereof.

"There shall be elected in each county, at the general election in nineteen hundred and six, and in each even-numbered year, thereafter an auditor, a treasurer, a clerk of the district court, a sheriff, a recorder of deeds, a county attorney, and a coroner, who shall hold office for the term of two years or until their successors are elected and qualified." On the first Tuesday in April in the year nineteen hundred fifteen, and each third year thereafter, and whenever a vacancy occurs in the office of county superintendent of schools, a convention shall be held at the county seat for the purpose of electing a county superintendent of schools, at which convention each school township, city, town or village independent district and each independent consolidated district in the county shall be entitled to one vote. Each such school corporation shall be represented at the convention by the president of the school board, or in his absence or inability to act, by some member of such school board, to be selected by the board. It is further provided, however, that where a congressional township is composed in whole or in part of rural independent districts that such rural independent districts shall be entitled to one vote in the convention, which vote shall be cast by such person as may be selected by the presidents of the component rural independent districts within

such towship at a meeting to be held at such time and place as the county auditor shall fix in the written notice hereinafter provided for. All representatives to such convention shall serve until a county superintendent is elected and quaified. Such conventions shall be called by the county auditor by mailing a written notice to the president and secretary of each school corporation at least ten days prior to the date of such convention and by the publication of such notice in the official newspapers published in the county. The county auditor shall be the secretary of such convention and shall call same to order and submit a list of the school corporations entitled to participate in such conventions. Said convention shall organize by the selection of a chairman and when so organized, shall elect a county superintendent of schools, who shall possess the qualifications required by law and shall hold the office for the term of three years and until his successor is elected and qualified. Such convention may by a majority vote select a committee consisting of five members whose duty shall be to investigate the various candidates for the office of county superintendent and report to said convention at a subsequent day to which the convention may adjourn; or by a three-fourths vote of such convention, said committee may be authorized to elect a county superintendent and file its election with the county auditor, and said person shall be deemed duly elected to such office. A majority of representatives herein provided shall constitute a quorum, such representatives to receive ten cents per mile one way for the distance necessarily traveled in attending such convention, to be paid from the county treasury. [35 G. A., ch. 107, § 1; 34 G. A., ch. 24, § 1; 31 G. A., ch 39; 23 G. A., ch. 37, § 2; 21 G. A., ch. 73, § 1; C. '73, § 589; R. §§ 224, 472-3; C. '51, § 96.]

Note 1: Women are by Par. 2748 made eligible to school offices, and by Par. 493 to the office of county recorder.

Sec. **1304. Exemptions.** The following classes of property are not to be taxed:

1. The property of the United States and this state, including university, agricultural college and school lands; the property of a county, township, city, town or school district or militia company, when devoted entirely to public use and not held for pecuniary profit; municipal, school, and drainage bonds or certificates hereafter issued by any municipality, school district, drainage district or county within the state of Iowa; public grounds including all places for the burial of the dead, crematoriums, the land on which they are built and appurtenant thereto not exceeding one acre, so long as no dividends or profits are derived therefrom; fire engines and all implements for extinguishing fires, with the grounds used exclusively for their buildings and meetings of the fire companies; no deduction from the assessment of the stock of any bank or trust company shall be permitted because of such bank or trust company holding such bonds and certificates as may be exempted above;

2. All grounds and buildings used for public libraries, including libraries owned and kept up by private individuals, associations or corporations for public use and not for private profit, for cemetery associations and societies, and for literary, scientific, charitable, benevolent, agricultural and religious institutions, and societies devoted solely to the appropriate objects of these institutions, not exceeding one hundred sixty acres in extent, and not leased or otherwise used with a view of pecuniary profit, but all deeds or leases by which such property is held shall be filed for record before the property above described shall be omitted from the assessment; the books, papers and apparatus belonging to the above institutions, used solely for the purposes above contemplated, and the like property of students in any such institution used for their education; moneys and credits belonging exclusively to such institutions, and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; real estate to the extent of not to exceed one hundred sixty acres in any civil township, owned by any educational institution of this state as a part of its endowment fund, shall not be taxed. [36 G. A., H. F. 307, § 1; 36 G. A., H. F. 475, § 1; 35 G. A., ch. 117, § 1; 35 G. A., ch. 116, § 1; 35 G. A., ch. 115, § 1; 34 G. A., ch. 61, § 1; 34 G. A., ch. 62, § 1; 33 G. A., ch. 81, §§ & 2; 32 G. A., ch. 54; 31 G. A., ch. 48; 29 G. A., ch. 56, § 1; 26 G. A., ch. 29; 21 G. A., ch. 97; C. '73, § 797; R. § 711; C. '51, § 455.] ,

Sec. **2468-k. Fire drills in public schools—exits unlocked—bulletin —teachers—penalty.** It shall be the duty of the state fire marshal and his deputies to require teachers of public and private schools, in all buildings of more than one story, to have at least one fire drill each month, and to require all teachers of such schools, whether occupying buildings of one or more stories, to keep all doors and exits of their respective rooms and buildings unlocked during school hours. The state fire marshal shall prepare a bulletin upon the causes and dangers of fires, arranged in not less than four divisions or chapters, and under the direction of the executive council shall publish and deliver the same to the public schools throughout the state, and the teachers thereof shall be required to instruct their pupils in at least one lesson each quarter of the school year with reference to the causes and dangers of fires. Any teacher failing to comply with the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not to exceed ten dollars for each offense. [34 G. A., ch. 128, § 11.]

Sec. **4999-a6. Protection against fire—means of escape.** The owners, proprietors and lessees of all buildings, structures or enclosures of three or more stories in height, now constructed or hereafter to be erected, shall provide for and equip said buildings and structures with such protection against fire and means of escape from such buildings as shall hereafter be set forth in this bill. [30 G. A., ch. 136, §1; 29 G. A., ch. 150, § 1.]

Note: 1. A two story school building with a basement five feet above ground will be regarded as a three story building.

Sec. **4999-a7. Buildings and enclosures—how classified.** The buildings, structures and enclosures contemplated in this act shall be classified as follows:

First. Hotels, office buildings or lodging rooms, including boarding houses in which sleeping rooms are kept for rent or hire, of three or more stories in height.

Second. Tenements or boarding houses, of three or more stories in height, occupied by one or more families or aggregating twenty persons or more; provided that a mansard roof or attic, when used for sleeping rooms, shall be counted as one story.

Third. Buildings used as opera houses, theaters or public halls, of a seating capacity exceeding three hundred.

Fourth. Seminaries and colleges, public school buildings, hospitals and asylums, of three or more stories in height.

Fifth. Manufactories, warehouses and buildings of all character of three or more stories in height, not specified in the foregoing sections.

Sixth. Hotels and other buildings which are of strictly fireproof construction. [35 G. A., ch. 305, § 1; 30 G. A., ch. 136, § 2; 29 G. A., ch. 150, § 2.]

Sec. **4999-a9. Class of escapes to be supplied—certain classes forbidden—discretionary power of commissioner—stairways.** Hotels, lodging houses, tenements, apartment buildings, schools, retail or department stores, seminaries, and college buildings, office buildings, hospitals, asylums, opera houses, theatres, assembly halls and factories required to be equipped by law shall be equipped with escapes of class "A" or class "B". All other buildings and structures required to be equipped with fire escapes shall be equipped with some one or more of said classes of fire escapes. [36 G. A., S. F. 576, § 4; 33 G. A., ch. 220, § 1; 30 G. A., ch. 136, § 4.]

CONSTITUTION OF IOWA

ARTICLE 9.

1. EDUCATION AND SCHOOL LANDS. 2. SCHOOL FUNDS AND SCHOOL LANDS.

Section 1. **Under control of general assembly.** The educational and school fund and lands, shall be under the control and management of the general assembly of this state.

Sec. 2. **Permanent fund.** The university lands, and the proceeds thereof, and all moneys belonging to said fund shall be a permanent fund for the sole use of the state university. The interest arising from the same shall be annually appropriated for the support and benefit of said university.

Sec. 3. **Lands appropriated.** The general assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this state, for the support of schools, which may have been or shall hereafter be sold or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of congress, distributing the proceeds of the public lands among the several states of the union, approved in the year of our Lord one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as has been or may hereafter be granted by congress, on the sale of lands in this state, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the general assembly may provide, shall be inviolably appropriated to the support of common schools throughout the state.

Sec. 4. **Fines, etc.—how appropriated.** The money which may have been or shall be paid by persons as an equivalent from exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws shall be exclusively applied in the several counties in which such money is paid, or fine collected, among the several school districts of said counties, in proportion to the number of youths subject to enumeration in such districts, to the support of common schools, or the establishment of libraries, as the board of education shall from time to time provide.

Sec. 5. **Proceeds of lands.** The general assembly shall take measures for the protection, improvement, or other disposition of such

lands as have been, or may hereafter be reserved, or granted by the United States, or any person or persons to this state, for the use of the university, and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be, and remain, a permanent fund, the interest of which shall be applied to the support of said university, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the general assembly, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

Sec. 6. **Agents of school funds.** The financial agents of the school funds shall be the same that, by law, receive and control the state and county revenue, for other civil purposes, under such regulations as may be provided by law.

Sec. 7. **Distribution.** The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths, between the ages of five and twenty-one years, in such manner as may be provided by the general assembly.

An act providing for a different method of distribution of the school fund, held unconstitutional as in conflict with the above section. *Dist. Tp. v. County Judge*, 13 Iowa, 250.

STATE BOARD OF EDUCATION.

Sec. **2682-c. State board of education.** The state university, the college of agriculture and mechanic arts, including the agricultural experiment station, and the Normal School at Cedar Falls, and the College for the Blind at Vinton, shall be governed by a state board of education consisting of nine members and not more than five of the members shall be of the same political party. Not more than three alumni of the above institutions and but one alumnus from each institution may be members of this board at one time. [34 G. A., ch. 141, § 2; 33 G. A., ch. 170, § 1.]

Sec. **2682-e. Meetings.** The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or they may be called by the secretary of the board, upon the written request of any five members thereof. [33 G. A., ch. 170, § 3.]

Sec. **2682-f. Organization—powers and duties.** The state board of eduction shall have power to elect a president from their number; a president and treasurer for each of said educational institutions, and professors, instructors, officers, and employes, to fix the compensation to be paid to such officers and employes; to make rules and regulations for the government of said schools, not inconsistent with the laws of the state; to manage and control the property, both real and personal, belonging to said educational institutions; to execute trusts or other obligations now or hereafter committed to the institutions; to direct the expenditure of all appropriations the general assembly shall, from time to time, make to said institutions, and the expenditure of

any other moneys; and to do such other acts as are necessary and proper for the execution of the powers and duties conferred upon them by law. Within ten days after the appointment and qualification of the members of the board, it shall organize and prepare to assume the duties to be vested in said board, but shall not exercise control of said institutions until the first day of July, A. D. one thousand nine hundred nine (1909). [33 G. A., ch. 170, § 4.]

Sec, **2682-g. Board of regents and boards of trustees abolished.** The board of regents and the boards of trustees now charged with the government of the state university, the college of agriculture and mechanic arts, and the normal school, shall cease to exist on the first day of July, A. D. 1909, and, on the same date, full power to manage said institutions, as herein provided, shall vest in the said state board of education. Nothing herein contained shall limit the general supervision or examining powers vested in the governor by the laws or constitution of the state. [33 G. A., ch. 170, § 5.]

Sec. **2682-h. Finance committee—officers—duties—term.** The said board of education shall appoint a finance committee of three from outside its membership, and shall designate one of such committee as chairman and one as secretary. The secretary of this committee shall also act as secretary of the board of education and shall keep a record of the proceedings of the board and of the committee and carefully preserve all their books and papers. All acts of the board relating to the management, purchase, disposition, or use of lands or other property of said educational institutions shall be entered of record, and shall show who are present and how each member voted upon each proposition when a roll call is demanded. He shall do and perform such other duties as may be required of him by law or the rules and regulations of said board. Not more than two members of this committee shall be of the same political party and its members shall hold office for a term of three years unless sooner removed by a vote of two-thirds of the members of the state board of education. [34 G. A., ch. 132, § 1; 33 G. A., ch. 170, § 6.]

Sec. **2682-i. Oath—bond.** Each member of the board and each member of the finance committee shall take oath and qualify, as required by section one hundred seventy-nine (179) of the code. The members of the finance committee, before entering upon their official duties, shall each give an official bond in the sum of twenty-five thousand dollars ($25,000), conditioned as provided by law, signed by sureties approved by the governor and, when so given, said bonds shall be filed in the office of the secretary of state. [33 G. A., ch. 170, § 7.]

Sec. **2682-k. Business office—employes—monthly visitation.** A business office shall also be maintained at each of the three educational institutions, and the board may hire such employes as may be necessary to enable the board to carry out the purposes of its creation, and to assist the said finance committee in the performance of its duties, and shall present to each general assembly an itemized account of the

expenditures of said committee. The members of the finance committee shall, once each month, attend each of the institutions named for the purpose of familiarizing themselves with the work being done, and transacting any business that may properly be brought before them as a committee. [34 G. A., ch. 132, § 3; 33 G. A., ch. 170, § 9.]

Sec. **2682-u. Biennial report.** The board shall make reports to the governor and legislature of its observations and conclusions respecting each and every one of the institutions named, including the regular biennial report to the legislature covering the biennial period ending June 30th, preceding the regular session of the general assembly. Said biennial report shall be made not later than October 1st, in the year preceding the meeting of the general assembly, and shall also contain the reports which the executive officers of the several institutions are now or may be by the board required to make, including, for the use of the legislature, biennial estimates of appropriations necessary and proper to be made for the support of the said several institutions and for the extraordinary and special expenditures for buildings, betterments and other improvements. [33 G. A., ch. 170, § 19.]

Sec. **2682-w. College for blind—control transferred.** That all the powers heretofore granted to and exercised by the board of control over the College for the Blind are hereby transferred to the State Board of Education and the State Board of Education is authorized and empowered to take charge of, manage and control said College for the Blind. [34 G. A., ch. 141, § 3.]

THE STATE COLLEGE OF AGRICULTURE AND MECHANIC ARTS.

Act of Congress, July 2, 1862.

AN ACT donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts.

Section **1.** That there be granted to the several states for the purpose hereinafter named, an amount of the public land, to be apportioned to each state, a quantity equal to thirty thousand acres for each senator and representative in congress to which the states are respectively entitled, by the apportionment under the census of 1860; provided, that no mineral lands shall be selected under the provisions of this act.

Sec. **2.** That the land aforesaid, after being surveyed, shall be apportioned to the several states in sections or sub-divisions of sections, not less than one-quarter of a section; and whenever there are public lands in a state subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said state shall be entitled shall be selected from such lands within the limits of such state, and the secretary of the interior is hereby directed to issue to each of the states in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre, to which said state may be entitled under this act, land scrip to the amount in acres for the deficiency of its distributive share;

said scrip to be sold by said states and the proceeds thereof to be applied to the uses and purposes prescribed in this act, and for no other purpose whatever; provided, that in no case shall any state to which land scrip may thus be issued, be allowed to locate the same within the limits of any other state, or of any territory of the United States, but their assignees may thus locate said land scrip upon any of the unappropriated lands of the United States subject to sale at private entry at one dollar and twenty-five cents or less per acre; and provided further, that not more than one million acres shall be located by such assignees, in any one of the states; and provided further, that no such location shall be made before one year from the passage of this act.

Sec. 3. That all the expenses of management, superintendence, and taxes from date of selection of said lands previous to their sale, and all the expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the state to which they may belong, out of the treasury of said state, so that the entire proceeds of the sales of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned.

Sec. 4. That all moneys derived from the sale of the lands aforesaid by the states to which the lands are apportioned, and from the sale of land scrip hereinbefore provided for, shall be invested in the stocks of the United States, or of the states, or of some other safe stocks, yielding not less than five per centum upon the par value of said stocks; and that the money so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section fifth of this act), and the interest of which shall be inviolably appropriated by each state, which may take and claim the benefit of this act, to the endowment, support, and maintenance, of at least one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life.

[Chapter 108. Statutes at Large, 47th Congress, approved April 26, 1882. amends this section "so as to permit the state of Iowa, which has provided a college in accordance with this act, to loan endowment fund belonging to said college, upon real estate security, under such rules and regulations as the general assembly shall hereafter provide."]

Sec. 5. *And be it further enacted,* that the grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several states shall be signified by legislative acts:

First. If any portion of the fund invested as provided by the foregoing section, or any portion of the interest thereon shall, by any action or contingency, be diminished or lost, it shall be replaced by

the state to which it belongs, so that the capital of the fund shall remain forever undiminished, and the annual interest shall be regularly applied, without diminution, to the purposes mentioned in the fourth section of this act, except that a sum not exceeding ten per centum upon the amount received by any state under the provisions of this act may be expended for the purchase of lands for sites or experimental farms, whenever authorized by the respective legislatures of said states.

LAWS OF IOWA.

Sec. **2645. Grant accepted.** Legislative assent is given to the purposes of the various congressional grants to the state for the endowment and support of a college of agriculture and mechanic arts, and an agricultural experiment station as a department thereof, upon the terms, conditions and restrictions contained in all acts of congress relating thereto, and the state assumes the duties, obligations and responsibilities thereby imposed. All moneys appropriated by the state because of the obligations thus assumed, and all funds arising from said congressional grants, shall be invested or expended in accordance with the provision of such grant, for the use and support of said college located at Ames. [24 G. A., ch. 6; 20 G. A., ch. 76, § 1; C. '73, § 1604; R., § 1714.]

Sec. **2648. Courses of study.** There shall be adopted and taught practical courses of study embracing in their leading branches such as relate to agriculture and the mechanic arts, and such other branches as are best calculated to thoroughly educate the agricultural and industrial classes in the several pursuits and professions of life, including military tactics, and, as a separate department, a school of mines, in which a complete course in theoretical and practical mining in its different branches shall be taught. [25 G. A., ch. 107; 20 G. A., ch. 27; C. '73, § 1621.]

Sec. **2649. Tuition—admission.** Tuition in the college herein established shall be forever free to pupils from the state over sixteen years of age, who have been residents of this state six months previous to their admission. Each county in this state shall have a prior right to tuition for three scholars from such county; the remainder, equal to the capacity of the college, shall be by the trustees distributed among the counties in proportion to the population, subject to the above rule. Transient scholars otherwise qualified, may at all times receive tuition. [C. '73, § 1619.]

Note: **Reports.** See also section 2682-b, page 125.

Sec. **2673. Sale of liquors.** No person shall open, maintain or conduct any shop or other place for the sale of wine, beer or spirituous liquors, or sell the same at any place within a distance of three miles from the agricultural college and farm; provided, that the same may be sold for sacramental, mechanical, medical or culinary purposes; and any person violating the provisions of this section shall be punished on conviction by any court of competent jurisdiction, by a fine not exceed-

ing fifty dollars for each offense, or by imprisonment in the county jail for a term not exceeding thirty days, or by both such fine and imprisonment. [C. '73, § 1620.]

THE NORMAL SCHOOL.

Sec. **2675. Board of trustees—officers.** The normal school at Cedar Falls, for the special instruction and training of teachers for the common schools, shall be officially designated and known as the Iowa State Teachers' College. The treasurer shall give bond in the sum of twenty thousand dollars, with good and sufficient sureties, to be filed with and approved by the secretary of state, which bond shall be conditioned for the safe keeping and proper disbursement of all money coming into his hands by virtue of his office. [33 G. A., ch. 171, § 1; 16 G. A., ch. 129, §§ 1, 4.]

Sec. **2676. Powers of board—admissions—fees.** The board shall have power to employ a sufficient number of suitable and competent teachers and other assistants; fix their compensation; make all necessary rules and regulations for the management of the school, the admission of pupils from the several counties in the state, giving to each county its proper representation therein in proportion to the population thereof, and to all teachers in the state equal rights, requiring that each one received as a pupil shall furnish satisfactory evidence of good moral character and the honest intention of following the business of teaching school in the state; and make such arrangements as it may for the lodging and boarding of pupils, which shall be paid for by them. It may charge a fee for contingent expenses not to exceed one dollar monthly, and a tuition fee of not more than six dollars a term, if necessary for the proper support of the institution, and shall determine what part of the year the school shall be open, its sessions to continue, however, for at least twenty-six weeks of each year. [17 G. A., ch. 142, § 2; 16 G. A., ch. 129, § 5.]

Sec. **2677. Branches of study.** Physiology and hygiene shall be included in the branches of study regularly taught to and studied by all pupils in the school, and special reference shall be made to the effect of alcoholic drinks, stimulants and narcotics upon the human system, and the board shall provide the means for the enforcement of the provisions of this section and see that they are obeyed. [25 G. A., ch. 1, § 1.]

Sec. **2678. Contract with school districts.** The board may contract with the board of directors of the school township or independent district in which the school is situated, and those contiguous thereto, for a period not exceeding two years at a time, to receive the pupils thereof into the State Teachers' College and furnish them with instruction, payment therefor to be made out of the teachers' fund of such townships or districts, which shall not exceed fifty cents, weekly, for each pupil; the contract to be in writing, and a copy filed with the county superintendent. [25 G. A., ch. 40, §§ 1-3.]

Sec. **2679. Teachers' reports—tuition.** If such a contract is entered into, all reports required by law to be made to the board of directors of such township or districts and the county superintendent, by the teachers thereof, shall be made by the principal of the normal school, and all sums paid for tuition shall go to its contingent fund. [Same, §§ 3, 4.]

Sec. **2680. Report to governor.** The board shall biennially, through its secretary, make a detailed report to the governor of its proceedings during the preceding two years, which report shall show the number of teachers employed, the compensation of each, the number of pupils and classification, an itemized statement of receipts and expenditures, and such further information with such recommendations. [31 G. A., ch. 125; 22 G. A., ch. 64, § 2; 16 G. A., ch. 129, § 9.]

Sec. **2682-b. Reports—what to contain.** That the secretary of the state university, the secretary of the state college of agriculture and mechanic arts, and the secretary of the State Teachers' College be required hereafter to make report to each general assembly within three days after the said general assembly shall have convened. Said reports shall show in plain manner the amount available each fiscal year from state appropriations and all other sources, for the erection, equipment, improvement and repair of buildings, also the funds received from state appropriations, interest on endowment funds, tuition, laboratory fees, janitor fees, donations, rent of lands and from all sources whatsoever, going to affect the annual income of the support funds of said institutions. Any appropriation of funds received for any special purpose whatsoever shall also be reported. Hospital receipts and sales of departments shall be listed separately. The report shall show how the moneys thus received were expended, giving under separate heads the cost of instruction, administration, maintenance and equipment of departments, and the general expenses of the institutions. It shall clearly state the number of professors, instructors, fellows and tutors, and the number of students enrolled in each course during each year of the biennial period. Students attending the short courses shall be reported separately. The amount of unexpended balances of departments, remaining in the hands of the treasurer, and the amounts undrawn from the state treasury on the thirtieth of June of the last year of the biennial period shall be given. The report of the secretary of the state college of agriculture and mechanic arts shall also show the receipts of the experiment station from all sources for each fiscal year and how such funds were expended. [33 G. A., ch. 170; 30 G. A., ch. 104.]

INDEX TO SCHOOL LAWS

PREPARED BY PROF. JAS. F. PAGE, HIGHLAND PARK COLLEGE.

Note—The subject heads of this index are arranged in perfect alphabetical order; the subheads nearly so. The principal word of reference occurs first in order and the words that follow it refer either to the subject head or to the principal word of reference as the sense requires.

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NUMBER 1—SECTION 2734-u.

(MAKE IN DUPLICATE.)

REVOCATION OF TEACHER'S CERTIFICATE.

OFFICE OF COUNTY SUPERINTENDENT,

....., Iowa,.....191....

To.....

.....

You are hereby notified that a certificate to teach, granted to..... dated.....191..., is hereby revoked in accordance with the provisions of section 2734-u, the said revocation to take effect from and after.....191...

.....

County Superintendent.

NUMBER 2—SECTION 2738.

APPLICATION FOR TEACHERS INSTITUTE.

OFFICE OF COUNTY SUPERINTENDENT,

.....County, Iowa,.....191...

To the Superintendent of Public Instruction:

I desire to hold a two days' institute during the school year ending June 30, 191..., as follows: Two days commencing.....191..., at..... and two days commencing.....191..., at..... I have also appointed, subject to your approval, the following persons to assist in said institute.

You are hereby requested to appoint the institutes for.....County at the places and on the dates above named, and to approve the faculty submitted below.

.....

County Superintendent.

NOTE—The sessions must be of two consecutive working days' duration.

Institute Faculty for the Session Commencing.....191...

Name.	Address.	Salary.	Subjects Assigned.
Conductor:			
Assistants:			

For the Second Session Commencing.....191...

Conductor:			
Assistants:			

NUMBER 3—SECTION 2738.

MONTHLY REPORT OF EXAMINATION FEES, INSTITUTE FUND.

....., Treasurer.....County.

Dear Sir—Inclosed find.....Dollars received from fees for the month of.....191..., collected from the following named persons:

Exam. No.	Name of Applicant	Amount Received	Exam. No.	Name of Applicant	Amount Received
1		$	26		$
2			27		
*	* * * *	* * *	*	* * * *	* * *
24			49		
25			50		
				Total	$

I hereby certify that the above report is correct.

.....Iowa. .....

County Superintendent.

....., 191...

NUMBER 4—SECTION 2734-p.

MONTHLY REMITTANCE OF EXAMINATION FEES TO THE TREASURER OF STATE.

OFFICE OF COUNTY SUPERINTENDENT.

.....County, Iowa.

.....191...

Hon....., Treasurer of State, Des Moines, Iowa:

Dear Sir—Inclosed find.....Dollars, being one-half of the examination fees collected during the month of.....191..., as provided in section 2734-p.

.....

.....191... *County Superintendent.*

NUMBER 5—SECTION 2738.

RECEIPT FOR INSTITUTE FUND.

$.....

Received of .....county superintendent,.....Dollars institute fund for the month ending.....191...

.....Iowa. .....

.....191... *County Treasurer.*

NUMBER 6—SECTION 2738.

ORDER ON COUNTY AUDITOR.

OFFICE OF COUNTY SUPERINTENDENT,

.....County, Iowa,

.....191...

$.....

To.....Auditor.....County:

Please draw and deliver to.....a warrant upon the Institute Fund for.....Dollars, as per duly verified bill No..... accompanying this order.

.....

No..... *County Superintendent.*

NUMBER 7—SECTION 2746.

NOTICE OF ANNUAL MEETING.

Notice is hereby given to the qualified electors of the.....
of.....; in the county of....., state of Iowa, that the annual meeting of said district will be held at.....on the second Monday in March, 191..., at.....o'clock..m., and closing at.....o'clock..m.

A director will be elected for a term of.....years to succeed .....years, to succeed ....., and .....

The meeting will be open for the transaction of such business as may legally come before it, and the board has directed that the following propositions shall be submitted to and determined by the voters:

.....

.....191... *Secretary.*

NUMBER 8—SECTION 2746.

PROCEEDINGS OF ANNUAL MEETING.

March.....191...

The electors of the.....in the county of.....state of Iowa, assembled at.....pursuant to notice. The meeting was called to order by the president at.....o'clock..m. The secretary, being absent.....was elected secretary.

The order of business and powers of the meeting were stated by the president. It was moved by.....seconded by..... that the ballots provide for voting upon a tax of.....Dollars for schoolhouse purposes.

Carried.....votes for and.....votes against.

On motion of.....seconded by.....it was voted that the ballots provide for voting a tax of Eight Hundred Dollars for the purpose of building a schoolhouse in subdistrict No.....

It was ordered that the ballots afford opportunity to vote upon the proposition to transfer.....Dollars of unused schoolhouse fund to the teachers' (contingent) fund.

The polls for voting were opened at.....minutes after.....o'clock. At.....minutes after.....o'clock the polls were closed, the ballots were counted, and the vote upon the several matters voted upon was in each case as follows:

.....

The time required by law during which the meeting must be kept open having passed, the meeting adjourned at.....minutes after.....o'clock.

....

Secretary. *Chairman.*

NUMBER 9—SECTION 2746.

CERTIFICATE OF ELECTION.

We hereby certify that at the annual meeting of the.....in the county of.....state of Iowa, held on the second Monday in March, 191.....was duly elected.....of said district, for a term of.....years, to succeed.....

Judges of Election

.....

President.

.....

Secretary.

.....

.....191... *Judge of Election.*

NUMBER 10—SECTION 2751.

NOTICE OF SUBDISTRICT MEETING.

Notice is hereby given that a meeting of the qualified voters of subdistrict No..... of the school township of.....in the county of....., state of Iowa, will be held at.....on the first Monday in March, 191... at.....o'clock...m., for the election of a director and for the transaction of such other business as may legally come before it. The question whether.....Hundred Dollars schoolhouse tax shall be voted upon the property of the subdistrict will be determined by ballot at such meeting.

.....

.....191... *Director of Subdistrict No.....*

NUMBER 11—SECTION 2751.

PROCEEDINGS OF ANNUAL SUBDISTRICT MEETING.

March.....191...

The voters of subdistrict No....., of the school township of.....in the county of....., state of Iowa, met pursuant to notice.

.....was appointed chairman, and.....secretary of the meeting.

The chairman announced the powers of the meeting.

The polls were opened at.....minutes after.....o'clock. At.....minutes after.....o'clock the polls were closed, and the judges proceeded to count the ballots. For director.....votes were cast for.....votes for....., and.....votes for.....upon which.....was declared elected director for the ensuing year, and he was given his certificate of election. Upon the proposition to vote a schoolhouse tax of.....Hundred Dollars upon this subdistrict.....votes were cast for the tax, and.....against the tax. It was declared that the vote was.....

At.....minutes after.....o'clock, on motion of.....the meeting adjourned.

....

Secretary. *Chairman.*

NUMBER 12—SECTION 2751.

CERTIFICATE OF ELECTION FOR DIRECTOR OF SUBDISTRICT.

We hereby certify that at the annual meeting of subdistrict No....., of the school township of....., in the county of....., state of Iowa, held on the first Monday in March, 191..., ... was duly elected director of said subdistrict.

Judges of Election

.....

Chairman.

.....

Secretary.

.....191...

NUMBER 13—SECTION 2753.

CERTIFICATE OF TAX VOTED BY SUBDISTRICT MEETING.

To....., Secretary Board of Directors of the School Township of.....:

I hereby certify that the voters of subdistrict No.....of the school township of....., in the county of....., state of Iowa, at the.....meeting held.....191..., voted a tax of.....Dollars for the erection of a schoolhouse in said subdistrict.

.....

.....191... *Secretary of Subdistrict Meeting.*

NUMBER 14—SECTION 2760.

BOND OF SECRETARY OR TREASURER.

Know all Men by These Presents: That I....., as principal, and.....and.....as sureties, of the.....in the county of....., state of Iowa, are held and firmly bound unto the.....in the said county and state, in the penal sum of.....Dollars, to be paid to the said....., for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

The condition of this obligation is that as.....of the.....in the county of.....state of Iowa, he will render a true account of his office and of his doings therein to the proper authority, when required thereby or by law; that he will promptly pay over to the officer or person entitled thereto all moneys which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property pertaining to his office, and deliver them to his successor, or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud or oppression, discharge all duties now or hereafter required of his office by law; and the sureties on such bond shall be liable for all money or public property that may come into the hands of such officer at any time during his possession of such office.

In testimony whereof we have hereunto subscribed our names this.....day of.....191...

.....

Principal.

.....

.....

Sureties.

STATE OF IOWA,.....*County, ss.*

I, ..., being duly sworn, depose and say that I am a resident freeholder of the state of Iowa, and am worth the sum of.....Dollars beyond the sum of my debts, and have property liable to execution in this state equal to the sum of.....Dollars.

.....

Subscribed and sworn to before me by the above named..... this.....day of.....191...

In testimony whereof witness my hand and official seal.

.....

(Seal.) *Notary Public.*

OATH OF OFFICE.

STATE OF IOWA,.....*County, ss.*

I, ..., do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of secretary (or treasurer) of the.....in the county of....., state of Iowa, as now or hereafter required by law.

.....

Subscribed and sworn to before me by the above named..... this.....day of.....191...

In testimony whereof witness my hand and official seal.

.....

(Seal.) *Notary Public.*

NUMBER 15—SECTION 2762.

DRAFT ON THE COUNTY TREASURER.

.....191...

To.....County Treasurer:

Pay to....., treasurer of the.....in the county of....., state of Iowa,.....Dollars teachers' fund.....Dollars schoolhouse fund, and.....Dollars contingent fund, being the amount of tax collected and due this district for the quarter ending.....191..., as shown by your notice of.....191...

....

Secretary. *President.*

NUMBER 16—SECTION 2762.

ORDER ON DISTRICT TREASURER.

.....191...

$.....

To....., Treasurer of the.....

Pay to.....or order.....Dollars from the.....fund, for.....

....

Secretary. *President.*

NUMBER 17—SECTION 2762.

ORDER REGISTER OF SECRETARY AND TREASURER.

Number	Date	In Whose Favor Drawn	For What Purpose	Teachers' Fund	Schoolhouse Fund	Contingent Fund
1	April 7, 191__	John Smith	Teaching school	$ 60.00		
2	April 7, 191__	A. J. Adams	Repairs on schoolhouse		$ 5.00	
3	April 7, 191__	Joel B. Young	Fuel			$ 5.00
4	May 10, 191__	Thomas Harrison	Erection of schoolhouse		125.00	
5	May 14, 191__	Sarah Johnson	Teaching school	63.74		

NUMBER 18—SECTION 2764.

REGISTER OF PERSONS OF SCHOOL AGE.

Name		Age		Attendance in days for year ending June 30	Reasons for Non-Attendance
Parents or Guardian	Children	Males	Females		

NOTE—Read section 2823-i.

NUMBER 19—SECTION 2766.

CERTIFICATE TO COUNTY OFFICERS.

I hereby certify that at a meeting of the board of directors of the.....held on the.....day of....., 191..., the following officers were elected and have qualified according to law:

....., to the office of president, postoffice.....
....., to the office of secretary, postoffice.....
....., to the office of treasurer, postoffice.....
....., to the office of truant officer, postoffice.....

.....191... .....

Secretary.

Members of the Board.

Name	Address	Name	Address

NUMBER 20—SECTIONS 2749-2750.

CERTIFICATE OF TAXES.

To the Board of Supervisors.....County:

I hereby certify that the board of directors of the school township of..... county of....., state of Iowa, has estimated amounts for the different funds as follows:

Fund	Amount	Fund	Amount
Teachers' (Sec. 2806)-----	$-----	Schoolhouse (Sec. 2813)-----	$-----
Contingent (Sec. 2806)-----	-----	*School Building Bond (Secs. 2768 and 2813) -----	-----

I certify, also, that the qualified electors of said school corporation, at a regular meeting held on the.....day of.....191... voted the following taxes of the property of the school corporation:

Fund	Amount	Fund	Amount
*Schoolhouse (Sec. 2749)-----	$-----	*School Building Bond (Secs. 2749 and 2768) -----	$-----

.....

.....191... *Secretary.*

*Taxes voted by the electors or estimated by the board to pay on "school building bonds." should be placed in the "school building bond fund." Taxes voted by the electors for any other purpose belong in the "schoolhouse fund."

NUMBER 21—SECTIONS 2767 AND 2806.

CERTIFICATE APPORTIONING TAXES.

To the Board of Supervisors of.....County:

I hereby certify that a tax voted by the voters of the school township of..... in the county of....., state of Iowa, of.....Dollars for schoolhouse purposes, has been apportioned by the board of directors among the subdistricts as follows:

Upon subdistrict No. 1.....Dollars.
Upon subdistrict No. 2.....Dollars.
Upon subdistrict No. 3.....Dollars.
Upon subdistrict No. 4.....Dollars.
Upon subdistrict No. 5.....Dollars.

.....

.....191... *Secretary.*

NUMBER 22—SECTION 2767.

CERTIFICATE OF TAX VOTED BY A SUBDISTRICT.

To the Board of Supervisors of.....County:

I am directed by the board of directors of the school township of.....in the county of.....state of Iowa, to certify that the voters of subdistrict No.....of said township, at a meeting held.....191..., voted that.....Dollars be raised on the property within the subdistrict for schoolhouse fund.

.....

.....191... *Secretary.*

NUMBER 23—SECTION 2768.

TREASURER'S ACCOUNT.

.....*Treasurer, in account with teachers', schoolhouse or contingent fund.*

DR.

Sept.	28, 19.....	To cash received of county treasurer, semi-annual apportionment	$ 270.00
Oct.	5, 19.....	To cash received of county treasurer, district tax	75.00
Jan.	4, 19.....	To cash received of county treasurer, district tax	150.00
April	5, 19.....	To cash received of county treasurer, district tax	197.00
April	5, 19.....	To cash received of county treasurer, semi-annual apportionment	135.00
July	5, 19.....	To cash received of county treasurer, district tax	100.00

.....*Treasurer, in account with teachers' fund.* CR.

Oct.	13, 19.....	By cash paid James Hogan, on order No. 1	$ 136.00
Oct.	13, 19.....	By cash paid Sarah Smith, on order No. 8	89.00
Nov.	14, 19.....	By cash paid Nicholas Hoover, on order No. 4	135.00
May	3, 19.....	By cash paid Louisa Martin, on order No. 7	82.00
May	4, 19.....	By cash paid Jas. M. Higgins, on order No. 10	115.00
May	4, 19.....	By cash paid Stephen Phelps, on order No. 11	175.00
May	5, 19.....	By cash paid Amelia Mason, on order No. 13	95.00

NUMBER 24—SECTION 2771.

CERTIFICATE OF APPOINTMENT.

To.....

You are hereby notified that at a meeting of the board of directors of the ....., in the county of....., state of Iowa, on the.....day of.....191.., you were appointed.....of said.....to fill a vacancy occasioned by the..... of.....

.....

.....191... *Secretary.*

NUMBER 25—SECTION 2773.

DEED FOR SCHOOLHOUSE SITE.

Know all Men by These Presents: That we,....., and ....., of the county of....., state of Iowa, in consideration of the sum of.....Dollars in hand paid, do hereby sell and convey unto the....., in the county of....., state of Iowa, the following described premises, situated in the county of....., state of Iowa, to-wit: (*Here describe the premises.*)

And we do hereby covenant with the said.....that we are lawfully seized of said premises; that they are free from incumbrance; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to the said premises against the lawful claims of all persons whomsoever.

.....

.....

Signed this.....day of.....191...

STATE OF IOWA.....*County, ss.*

On this.....day of.....191..., before me a notary public in and for said county, personally came.....and..... personally to me known to be the identical persons whose names are affixed to the above deed, for the purposes therein expressed.

Witness my hand and notarial seal this.....day of.....191...

.....

(L. S.) *Notary Public.*

NUMBER 26—SECTION 2773.

LEASE OF SCHOOLHOUSE SITE.

Know all Men by These Presents: That.....of the county of....., state of Iowa, for the consideration hereinafter mentioned, does

hereby release unto....., president of the board of directors of the.....in the county of....., state of Iowa, or his successor in office, for the use of said.....for school purposes, the following described premises, situated in the county and state aforesaid, to-wit: (*Here describe the lot or parcel of ground*) together with all the privileges thereto belonging, for the term of.....from the.....day of.....191...

The said....., president as aforesaid, or his successor in office, hereby agrees to pay the said.....for the use of said premises, the.....sum of.....Dollars, to be paid at the expiration of this lease.

In testimony whereof we have hereunto subscribed our names this.....day of.....191...

Sign in duplicate and file with County Recorder.

.....

.....

President.

NUMBER 27—SECTION 2778.

CONTRACT BETWEEN BOARD AND TEACHER.

This contract between....., a teacher of.....county, Iowa, and....., president board of directors of the.....in the county of....., state of Iowa, witnesseth:

That the said.....agrees to teach the public school in.....of said district for the term of.....weeks, commencing on the.....day of.....191..., and well and faithfully to perform the duties of teacher in said school, according to the law, and the rules legally established for the government thereof, including the exercise of due diligence in the preservation of the school buildings, grounds, furniture, apparatus and other school property.

In consideration of said services, the said....., as president of the board, in behalf of said.....agrees to provide a suitable and comfortable room for said school, to keep the same in repair and keep all outbuildings in a healthful state and in good repair, and to provide the supplies necessary for the comfort and progress of the school and to pay the said.....the sum of.....Dollars a month for.....school months, at the end of.....

Witness our hands this.....day of.....191...

.....

Teacher.

.....

President.

NOTE—Any other matter agreed upon between the board and the teacher should be incorporated in the contract.

NUMBER 28—SECTION 2779.

PROPOSALS FOR ERECTION (OR REPAIR) OF SCHOOLHOUSE.

Notice is hereby given that the proposals for the erection (*or repair*) of a schoolhouse in the.....in the county of....., will be received by the undersigned, at his office in.....(where plans and specifications may be seen), until 1 o'clock p. m.....191..., at which time the contract will be awarded to the lowest responsible bidder. The board reserves the right to reject any or all bids.

.....

.....191... *Secretary.*

NUMBER 29—SECTION 2779.

CONTRACT FOR BUILDING A SCHOOLHOUSE.

Contract made and entered into between.....of the county of....., state of Iowa, and....., in behalf of the....., in the county of....., state of Iowa, and his successors in office.

In consideration of the sum of.....Dollars, to be paid as hereinafter specified, the said.....hereby agrees to build a schoolhouse and to furnish the material therefor, according to the plans and specifications for the erection of said house hereto appended, at.....

.....

.....

in said..... The said house is to be built of the best material in a substantial, workmanlike manner, and to be completed and delivered to the said

.....or his successors in office, free from any lien for work done or material furnished, on or before the.....day of.....191.. And in case the said house is not finished by the time herein specified, the said .....shall forfeit and pay to the said..... or his successors in office for the use of said.....the sum of.....Dollars, and shall also be liable for all damages that may result to said.....in consequence of said failure.

The said....., or his successors in office, in behalf of said....., hereby agrees to pay the said.....the sum of.....Dollars when the foundation of said house is finished; and the further sum of.....Dollars when the walls are up and ready for the roof, and the remaining sum of.....Dollars when the said house is finished and delivered as herein stipulated.

It is further agreed that this contract shall not be sublet, transferred, or assigned, without the consent of both parties.

Witness our hands this.....day of.....191...

.....
Contractor.

.....
President.

NUMBER 30—SECTION 2779.

BOND FOR PERFORMANCE OF CONTRACT.

Know all Men by These Presents: That we,....., as principal, and.....and....., as sureties, of the county of....., state of Iowa, are held and firmly bound unto the....., in the county of.....state of Iowa, in the penal sum of.....Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators and assigns, jointly, severally and firmly by these presents.

The condition of the above obligation is such that, whereas the said..... .....has this day entered into a written contract with..... as president of the board of directors of the.....in the county of.....state of Iowa, and his successors in office, for the erection and completion of a schoolhouse, in said.....by the.....day of.....191..., according to the plans and specifications for the construction of said house appended to said contract.

Now, therefore, if the said.....shall faithfully and fully comply with all the stipulations of said contract, then this obligation shall be void, otherwise to remain in full force and virtue in law.

In testimony whereof we have hereunto subscribed our names this.....day of.....191...

.....
Principal.

.....
.....
.....
Sureties.

NUMBER 31—SECTION 2785.

LIST OF PARENTS AND CHILDREN, KEPT BY DIRECTORS.

Parent or Guardians	Names of Children	Age—Years		Days in school last year	Reasons for non-attendance
		Male	Females		
John Smith	Peter Smith	10		40	See below
	Eliza Smith		12	100	
James Jones	William Jones	8		80	
	Charles Peters (ward)	15		120	
Anna Byron	James Byron	12			See below

NOTE—Read section 2823-l.

NUMBER 32—SECTION 2803.

NOTICE PERMITTING ATTENDANCE FROM ANOTHER DISTRICT.

To....., *Secretary of the Board of Directors of*.....
Notice is hereby given that.....and.....
children residing in the.....have been granted permission by the board or county superintendent to attend school in.....commencing on the.....day of.....191..., for a term of.....months.

.....
President.

.....191.

.....
Secretary.

NUMBER 33—SECTION 2808.

NOTICE OF SEMI-ANNUAL APPORTIONMENT.

OFFICE OF COUNTY TREASURER,

....., 191...

To....., *President of the*.....
You are hereby notified that according to the semi-annual apportionment made this day by the county auditor, as provided by section 2808, the sum of.....
Dollars is due the....., in the county of....., state of Iowa.

.....
County Treasurer.

NUMBER 34—SECTION 2809.

CERTIFICATE OF ELECTION OF COUNTY SUPERINTENDENT.

OFFICE OF COUNTY AUDITOR,

....., 191...

I hereby certify that.....was elected to the office of county superintendent for the term commencing September....., 191...
His postoffice address is....., Iowa.

.....
County Auditor.

NUMBER 35—SECTION 2809.

CERTIFICATE OF QUALIFICATION OF COUNTY SUPERINTENDENT.

OFFICE OF COUNTY AUDITOR,

....., 191...

I hereby certify that.....has duly qualified for the office of county superintendent for the term commencing September.....191...
His postoffice address is.....Iowa.

.....
County Auditor.

NUMBER 36—SECTION 2810.

NOTICE OF SCHOOL TAX COLLECTED.

OFFICE OF COUNTY TREASURER,

....., 191...

To....., *President of the Board of Directors of the*.....
You are hereby notified that the amount now collected and due the.....in.....county, state of Iowa, is:
$.....teachers' fund $.....schoolhouse fund.
$.....contingent fund. $.....school building bond fund.

.....
County Treasurer.

NUMBER 37—SECTION 2815.

APPLICATION FOR APPOINTMENT OF REFEREES.

To....., *Superintendent of*.....*County:*
In accordance with the action of the board of directors of the..... you are hereby requested to appoint three disinterested persons to inspect, and assess the damages which the owner will sustain by appropriating for school purposes, the following described real estate:.....
.....
.....
.....
.....
President.
.....191...
.....
Secretary.

NUMBER 38—SECTION 2815.

APPOINTMENT OF REFEREES.

To.....*and* .....
You are hereby appointed and constituted a board of referees, under the provisions of section 2815, to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate:.....
.....
.....
.....
in....., in the county of.....state of Iowa, containing one acre of land, exclusive of highway.
You will, therefore, on the.....day of.....191..., at....o'clock..m., proceed to examine the real estate above described, and assess, under oath, the cash damages, which the owner will sustain by the appropriation of said land for school purposes, and immediately thereafter report to me in writing the amount of said damages.
.....
County Superintendent.
.....191...

OATH OF REFEREES.

We, ...and.....
do solemnly swear that we will well and truly, and to the best of our ability perform all the duties imposed upon us by the foregoing commission.
.....
.....
.....
Subscribed and sworn to before me by.....
and.....this.....day of.....191...
.....
Notary Public.

NUMBER 39—SECTION 2815.

NOTICE TO OWNER OF REAL ESTATE.

To....., ...*County:*
You are hereby notified that I have this day appointed referees to assess the damages which the owner will sustain by the appropriation for school purposes of the following described real estate:.....
.....
.....
.....
Said referees will meet at the above described real estate on the.....day of.....191..., at.....o'clock..m., and assess said damages as provided by law.
.....
.....191... *County Superintendent.*

NUMBER 40—SECTION 2815.

REPORT OF REFEREES.

To....., *Superintendent of*.....*County:*
We, the undersigned, appointed to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate:.....

.....
.....
do hereby report that we have on this.....day of.....191..carefully examined said described real estate and have assessed the damages at..... Dollars.

.....
.....
.....
Referees.

Subscribed and sworn to before me this.....day of.....191...

.....
Notary Public,
in and for.....county

NUMBER 41—SECTION 2815.

NOTICE OF ASSESSMENT OF DAMAGES.

To....., ...*County:*

You are hereby notified that referees were appointed to assess the damages which the owner would sustain by the appropriation for school purposes of the following described real estate:.....
.....
.....
.....
and that said referees met at said premises on the.....day of.....191... and assessed said damages at.....Dollars, as shown by their report on file in my office.

.....
.....191... *County Superintendent.*

NUMBER 42—SECTION 2818.

AFFIDAVIT OF APPEAL.

STATE OF IOWA,.....*County, ss.*

.....
v.
SCHOOL TOWNSHIP OF.....

I, ..., being duly sworn, on oath, say: That on the.....day of.....191..., the board of directors of said school township rendered a decision (or made an order) whereby (*here state facts showing affiant's interest in the decision and the injury to that interest*); that said board in rendering the decision (or making the order) aforesaid, committed errors as follows. (*Here state the errors charged.*)

.....
Subscribed and sworn to by.....before me, this.....day of.....191...

.....
Notary Public.

NUMBER 43—SECTION 2819.

NOTICE OF APPEAL.

STATE OF IOWA,.....*County, ss.*

.....
v.
SCHOOL TOWNSHIP OF.....

To....., *Secretary Board of Directors of the School Township of*.....:

You are hereby notified that.....has filed in my office an affidavit alleging that said board of directors, on the.....day of....., 191.. made a decision (*or an order*) whereby (*here describe the decision or order so that the secretary may identify it*), and claiming an appeal therefrom. You are therefore required within ten days after receiving this notice to file in my office a complete transcript of the record of the proceedings of the board relating to said order, together with copies of all papers filed with you pertaining to said action appealed from.

.....
.....191... *County Superintendent.*

NUMBER 44—SECTION 2819.

CERTIFICATE TO SECRETARY'S TRANSCRIPT.

I, ..., secretary of the board of directors of the school township of....., in the county of....., state of Iowa, hereby certify that the foregoing is a correct and complete transcript of the record of all proceedings of the board and of all papers filed relating to the case .....*v*.....

.....

.....191... *Secretary.*

NUMBER 45—SECTION 2819.

NOTICE OF HEARING OF APPEAL.

STATE OF IOWA,.....*County, ss.*

.....

v.

SCHOOL TOWNSHIP OF.....

To.....

You are hereby notified that there is on file in this office a transcript of the proceedings of the board of directors of the school township of.....at a meeting held on the.....day of.....191..., in relation to (*here describe the decision or order appealed from*) which appeal has been taken; and that the said appeal will be heard before me at.....on the.....day of.....191..., at.....o'clock....m.

.....

.....191... *County Superintendent.*

NUMBER 46—SECTION 2820.

CERTIFICATE TO COUNTY SUPERINTENDENT'S TRANSCRIPT.

I, ..., superintendent of.....county, state of Iowa, hereby certify that the foregoing is a correct and complete transcript of the records of all proceedings had, testimony given and papers filed in my office, and my rulings thereon, also of my decision in the case.....*v*.....

.....

.....191... *County Superintendent.*

NUMBER 47—SECTION 2824.

BOND FOR SALE OF BOOKS AND SUPPLIES.

Know all Men by these Presents:

That we, ..., of the county of....., as principal, and.....and.....as sureties, are held and firmly bound unto the.....in the county of.....state of Iowa, in the penal sum of.....Dollars, for the payment of which we bind ourselves, our heirs, executors and administrators, firmly by these presents.

The condition of the foregoing obligation is, that whereas the above named .....is to take charge of, care for, and account for all text-books and supplies, and to return all moneys received from the sale of such books and supplies to the contingent fund of said district; now, if the said .....shall promptly pay over to the treasurer of the district all money which may come into his hands from the sale of books and supplies, and shall account in full at any time for all books and supplies coming into his hands, and shall deliver to any person or officer authorized to receive the same, all books and supplies unsold, and make full settlement as required by law, then this bond to be void, otherwise in full force.

Signed this.....day of.....191...

.....

Principal.

.....

.....

Sureties.

NUMBER 48—SECTION 2828.

NOTICE TO PUBLISHERS OF TEXT-BOOKS.

Notice is hereby given that in accordance with law, bids will be received up to .....of the.....day of.....191... by.....at.....for the following text-books and supplies for the use of the schools of said.....

(Approximate Number Needed for First Supply)

Readers, First to Fifth, inclusive.....
Arithmetics, two books.....
Speller .....
Geographies, two books.....
United States History.....
Grammar .....
Language Lessons .....
Copy Books, 1-5, inclusive.....
Physiology .....
Music .....
Agriculture .....
Domestic Science .....
Manual Training .....

Approximate number in attendance upon the schools of said.....during the year 191.....

Samples of all text-books included in any bid must be deposited and remain in the office of the county superintendent.

The board reserves the right to reject any or all bids, or any part thereof.

.....

.....191.... *President.*

.....

Secretary.

NUMBER 49—SECTION 2830.

BOND OF CONTRACTOR TO FURNISH TEXT-BOOKS.

Know all Men by These Presents:

That we.....of....., as principal, and.....as sureties, are held and firmly bound unto the.....in the penal sum of.....Dollars to be paid to the said.....for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

The conditions of the above obligation are such that if the above bounden .....shall well and truly fulfill and comply with all the obligations of their contract made on the.....day of.....191..., with the aforesaid.....

.....

providing for the furnishing of school text-books at prices and on conditions set forth in their said contract, a copy of which said contract is hereto attached and made a part hereof, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto subscribed our names this.....day of.....191...

.....

Principal.

.....

.....

Sureties.

NUMBER 50—SECTION 2831.

PETITION FOR COUNTY UNIFORMITY.

To.....County Superintendent:

We, the undersigned, holding the office of school director, ask for the adoption of a uniform series of text-books in the schools of this county, and that you take steps to submit the question to the electors of the county, at the annual school meeting in March, as provided by law.

Names	District Name	Township

.....191...

NUMBER 51—SECTION 2831.

PROPOSITION AND BALLOT FOR COUNTY UNIFORMITY.

Shall there be a uniform series of school text-books in.....county, Iowa? Write yes or no in the square to the right.

NUMBER 52—SECTION 2758.

OATH OF PRESIDENT OR DIRECTORS.

STATE OF IOWA,.....*County, ss.*

I, ..., do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of Iowa, and that I will faithfully discharge the duties of.....* as now or hereafter required by law.

.....

Sworn to before me and subscribed in my presence by the said..... this.....day of .....A. D. 191...

.....

*Director of subdistrict or president of the board, as the case may be.

NUMBER 53—SECTIONS 2823-n TO 2823-r.

ORDER FOR LIBRARY BOOKS.

To the.....city of.....state of.....

I have been authorized to order the following books for the school library in the.....district (No.....), of....., township of..... county of....., state of Iowa.

Enclosed find money order or bank draft for $....., in full payment of the same.

No. Copies Wanted	Title	Catalogue No.	Net Price	
			Dol.	Cts.

Always fill out this blank carefully and plainly:

Ship via.....R. R.	Signed ..... *Secretary.*
To	P. O. Address.....
R. R. Station.....	County .....
County	State .....
State	191....

NUMBER 54—SECTION 2823-b.

NOTICE TO PRINCIPAL OF PRIVATE OR PAROCHIAL SCHOOL.

Office of secretary, board of directors of the.....district (No.....), township of....., county of.....state of Iowa.

.....191...

To....., *Principal of*.....

As provided in section 2823-b Supplemental Supplement to the Code, within ten days from the receipt of this notice, you will please make a certified report to this office, giving the names, ages, and days of attendance of all pupils in your school for the preceding year, beginning.....and ending.....

.....

Secretary.

.....

Postoffice.

NUMBER 55—SECTION 2823-b.

NOTICE TO ANY PERSON HAVING CONTROL OF CHILD, FROM SEVEN TO SIXTEEN YEARS OF AGE, UNDER PRIVATE INSTRUCTION.

Office of secretary, board of directors of the.....district (No.....), township of.....county of....., state of Iowa.

.....191....

To.....,

.....*Iowa:*

As provided in section 2, chapter 128, acts of the Twenty-ninth General Assembly, within ten days from the receipt of this notice you will please make a certified report to this office stating the name and age of the child.....under your control now receiving private instruction, and the period of time during which said child.....ha.... been under such private instruction within the preceding year, beginning..... 19...., and ending.....19...

.....

Secretary.

.....

Postoffice.

NUMBER 56—SECTION 2823-b.

REPORT OF ATTENDANCE AND WORK IN PRIVATE OR PAROCHIAL SCHOOL OR UNDER PRIVATE TUTOR.

Name of Pupil	Age	Date Enrolled	Days attend.	Studies Pursued									Name of Parent or Gaurdian
				Orthog.	Reading	Writing	Arithmetic	Grammar	Physiology	U. S. Hist'y	Geography	Vocal music	

NUMBER 57—SECTION 2823-q.

REPORT BY TEACHERS, COUNTY SUPERINTENDENTS, SCHOOL OFFICERS, OR EMPLOYES, TO THE SECRETARY OF THE SCHOOL CORPORATION CONCERNING VIOLATIONS OF THE LAW FOR COMPULSORY EDUCATION.

.....191....

To....., *Secretary of the Board of Directors of*.....*District (No.....) township of*....., *county of*....., *state of Iowa:*

I hereby certify that I have reason to believe that.....and..... children between the ages of seven and sixteen years are not attending school as required by the provisions of chapter 128, acts of the Twenty-ninth General Assembly providing for compulsory education.

.....

.....

FORM 58.

PETITION TO ESTABLISH AN INDEPENDENT DISTRICT UNDER SECTION 2794.

To the Board of Directors of the Independent School District of....., County of....., state of Iowa.

Gentlemen:

We, the undersigned, duly qualified voters of the town of..... .....County, Iowa, would respectfully represent that we reside in the town plat of said town and that we constitute more than.....per cent of the legal voters so residing and that there are over one hundred persons residing within the limits of the aforesaid town of.....

That we are desirous and do hereby petition your honorable body for the formation of an independent school district which shall include all of said town and also other territory contiguous thereto, hereby respectfully petition you to establish the boundaries of such proposed independent district as herein set out, viz:

(Give description of boundaries.)

We respectfully show and represent that we reside on the territory aforesaid, and we respectfully ask that all the territory situated within the limits of said town and boundaries above given be organized into one independent school district and that the question of such organization be submitted to the voters thereof, after due notice thereof has been given.

FORM 59.

PETITION FOR SEPARATE BALLOT.
UNDER SECTION 2794.

To the Board of Directors of the Independent School District of..... County of....., State of Iowa.

We, the undersigned, respectfully petition your honorable body for the formation of an Independent School District which shall include all the incorporated town of ....., in.....County, Iowa, and also other territory contiguous to the said town and we do petition you to establish the boundaries of such proposed Independent School District as set out in the following, to-wit:

(Give description of territory here.)

We respectfully show and represent that we reside on the territory aforesaid outside of the above named platted town and that we constitute more than 25 per cent of the legally qualified voters so residing thereon.

We respectfully ask that all the territory including the said town of..... situated within the limits and boundaries above given, be organized into one Independent School District and that the question of such organization be submitted to the voters upon said territory at a meeting of the voters thereon, after notice thereof, duly given, and that the voters residing outside the town of.....be permitted to vote separately on the aforesaid proposition, and all as provided by law.

FORM 60.

PETITION TO ESTABLISH A CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
SECTION 2794-a.

To the Honorable Board of Directors of....., Township of....., County of....., State of Iowa.

Gentlemen:

We, the undersigned, duly qualified voters of.....Township, ...County, Iowa, would respectfully represent that we reside on the territory of the proposed consolidated independent school district; that there are not less than 16 sections contained in the proposed consolidated independent school district, also that we constitute more than one-third (1-3) of the electors residing thereon and that this petition setting forth the boundaries of the proposed district has been duly approved by the County Superintendent (Superintendents, if territory is in two counties) of.....county (or counties).

That we are desirous of and do hereby petition your honorable body for the formation of a consolidated independent school district, which shall include all contiguous territory herein set out, viz:

(Give description.)

We respectfully show and represent that we reside on the aforesaid territory and we hereby respectfully ask that all the territory situated within the limits herein described be organized into one consolidated independent school district and that the question of such organization be submitted to the voters upon said territory at a meeting of the electors thereon after due notice thereof has been given.

FORM 61.

DRIVER'S CONTRACT.

FORM USED BY THE MARATHON, IOWA, (CONSOLIDATED) SCHOOL BOARD.

THIS AGREEMENT, Made and entered into by and between....., President of the Board of Directors of the Independent School District of Marathon in Poland township, Buena Vista county, Iowa, and....., of Poland township, Buena Vista county, Iowa.

Said.....covenants and agrees to transport the children of Route No.....to the Central School in Marathon, each day that school is in session during the school year beginning..... Said.....further agrees to comply with the following conditions:

1. He will furnish a safe, strong team with proper harness.
2. He will furnish comfortable blankets and robes, sufficient for the best protection of the pupils while on the road.
3. He will collect the pupils by driving over the route each morning as directed by the board, in time to convey the pupils to school so as to arrive at the school building not earlier than nine o'clock a. m. or later than 9:10 a. m., waiting not longer than three minutes and blowing a whistle at each house.
4. He will return the pupils to their homes, leaving the school house at 3:30 p. m., or later, as the board may determine.
5. He will personally drive and manage the team, or provide a suitable driver satisfactory to the board, who will comply with all the conditions of this contract.
6. He will refrain from the use of profane language in the presence of the pupils.
7. He will not use tobacco in any form during the time he is conveying the pupils to and from school.
8. He will avoid fast driving and racing with other teams, and stop before crossing the railroad and be sure that no train is coming and that it is safe and clear before attempting to cross.
9. He will keep order among the pupils and report any improper conduct to the Superintendent.
10. He will not allow the school wagons to be used for any other purpose, and report any damage to hacks to the Superintendent.
11. Should a driver frequently arrive at the school house late in the morning or be late to start to return the pupils to their homes, unless for unavoidable reasons, he shall be fined the sum of $1.00 for each failure.

In consideration of the said services, the said....., President of the board in behalf of the Independent School District of Marathon hereby agrees to pay the said.....the sum of.....dollars per month excepting it is herein agreed that the board shall retain one-half of the first month's wages until the close of the term of service of.....to insure the faithful performance of the terms of this contract. The Board of Directors reserves the right to terminate this contract at any time.

The board reserves the right to change the route when they consider it necessary for the best interests of the patrons. In case of change $2.50 per month will be added for each additional mile added to the route. When the route is shortened $2.50 per month will be deducted for each mile taken from the route.

The President of the school board agrees to furnish a safe, strong wagon complete.

IN TESTIMONY WHEREOF we have hereunto subscribed our names this.....day of.....191...

....

President. *Driver.*

The following forms are suggested to be used in forming consolidated districts:

FORM 62.

COUNTY SUPERINTENDENT'S APPROVAL OF CONSOLIDATED PETITION UNDER SECTION 2794-a.

Should the county superintendent wish to be more formal the following might be used:

Know all by These Presents, That I,....., County Superintendent of Schools of the County of.....in the state of Iowa, have examined the petition hereto attached for consolidation of certain school territory within said county, which petition was filed with me on the.....day of....., 191... And I find that said petition is sufficient and complies with section 2794-a, Supplemental Supplement to the Code of Iowa, 1915, and accordingly I approve said petition.

.....

County Superintendent.

.....

Date.

(Seal.)

FORM 63—SECTIONS 2763-2794-a.

NOTICE OF SPECIAL MEETING FOR CONSOLIDATION.

....., Iowa, 191...

To.....
Member of School Board
.....Dist. of....., Iowa.

Dear Sir:

You are hereby notified that a special meeting of the Board of Directors of the .....School District of.....in the county of....., state of Iowa, will be held on the.....day of....., 191..., at the.....
(Insert place of meeting.)
....., Iowa, at.....o'clock....m., for the purpose of considering and acting upon a petition presented by the electors residing in certain territory requesting that an election be called to vote on the formation of a consolidated independent school district as provided in section 2794-a, Supplemental Supplement of the Code of Iowa, 1915.

Respectfully,

.....
President Board of Directors.

FORM 64—SECTION 2794-a.

RESOLUTION TO BE ADOPTED BY THE BOARD.

WHEREAS, A petition for school consolidation reading as follows:

"To the Honorable Board of Directors of....., Township of....., County of....., state of Iowa.

Gentlemen:

We, the undersigned, duly qualified voters of..... Township, ...County, Iowa, would respectfully represent that we reside on the territory of the proposed consolidated independent school district; that there are not less than 16 sections contained in the proposed consolidated independent school district, also that we constitute more than one-third (1-3) of the electors residing thereon and that this petition setting forth the boundaries of the proposed district has been duly approved by the county superintendent (superintendents, if territory is in two counties) of..... County (or counties).

That we are desirous of and do hereby petition your honorable body for the formation of a consolidated independent school district, which shall include all contiguous territory herein set out, viz:

(Give description.)

We respectfully show and represent that we reside on the aforesaid territory and we hereby respectfully ask that all the territory situated within the limits herein described be organized into one consolidated independent school district and that the question of such organization be submitted to the voters upon said territory at a meeting of the electors thereon after due notice thereof has been given."

Was filed with said Board of Directors of the Independent School District of ....., in the county of....., state of Iowa, on the.....day of....., 191... and,

WHEREAS, Said petition proposes the incorporation of certain territory within said county, as a Consolidated Independent School District, and is signed by more than one-third of the qualified electors residing within said territory; and,

WHEREAS, Said petition is sufficient in every particular and complies with Section 2794-a Supplemental Supplement of the Code of Iowa, 1915, and should be granted, and this board has jurisdiction thereof; now therefore

Be it Resolved, by the Board of Directors of the Independent School District of ....., in the county of....., state of Iowa;

Section 1. That an election of the voters residing within the territory proposed for school consolidation in said petition is hereby called to be held on the..... day of....., 191..., at the.....,
(Place of meeting)
.....Iowa, from one o'clock p. m. until six o'clock p. m., at which election there shall be submitted to the voters residing within said territory, to be by them voted upon, the following proposition, to-wit:

Shall the proposed Consolidated Independent District of..... .....be established?

(Attach ballot here.)

Sec. 2. The secretary of the Board of Directors is hereby instructed to prepare and supply the ballots to be used at said election in substantially the following form:

FORM 65—SECTION 2794-a.

OFFICIAL BALLOT IN CONSOLIDATION.

(Notice to Voters: For an affirmative vote on the question submitted upon this ballot make a cross (X) in the square before the word "Yes." For a negative vote make a cross (X) in the square preceding the word "No.")

Shall the proposed Consolidated Independent School District of....., ...County, Iowa, be established?

YES. NO.

Sec. 3. The secretary of the Board of Directors is hereby instructed to post notices of said election at least ten days before said election according to the requirements of law, in substantially the following form:

FORM 66—SECTION 2794-a.

NOTICE OF SPECIAL SCHOOL ELECTION—CONSOLIDATED DISTRICT.

Whereas, a written description of contiguous territory within the county of .....and state of Iowa as follows, to-wit:

(Give description of territory.)

Signed by one-third of the qualified voters residing upon said territory and approved by the county superintendent of said county, has been filed with the school board of....., Iowa, a school corporation in which portion of

(Give name of district)

the proposed district having the largest number of voters is situated, requesting the establishment of a consolidated independent school district, to be known as..... .....and embracing said territory. Now, there-

(Insert name of new district)

fore, notice is hereby given to the qualified electors residing in or upon the above described territory in the county of (or counties, if more than one)....., and state of Iowa, that a special election is hereby called by the board of..... .....Iowa, to be

(Give name of board calling election)

held at.....Iowa, on the.....

(Give place for holding election) (Give date)

day of....., 191..., at one o'clock p. m. and closing at six

(month)

o'clock p. m. at which election there will be submitted to the voters the question:

Shall the proposed Consolidated Independent District of..... .....be established?

(Give name of new district)

Dated at....., Iowa, this.....day of.....191...

.....

Secretary Board of Directors.

FORM 67—SECTION 2733-a1.

AFFIDAVIT OF RESIDENCE.

....., Iowa.

I hereby certify that I am the parent or guardian of....., whose address is....., County of....., state of Iowa, and that he is of legal school age and that he is a resident of .....District, ...Township, ...County, state of Iowa.

.....

Parent or Guardian.

Subscribed and sworn to before me on this.....day of....., 191...

.....

(Seal.) *Notary Public in and for said county.*

DECISIONS

IN

APPEAL CASES

Compiled for the Use of School Officers
and Directors

EDITION OF 1915

ALBERT M. DEYOE
Superintendent of Public Instruction

PREFACE.

In compiling the decisions of the Superintendent of Public Instruction, it has been found possible to select only a few; therefore such cases as have a decisive bearing upon important points of school law were chosen.

There are many questions arising in the administration of school laws which the courts alone have power to determine. Questions implying right and title to office, interpretation and legality of contracts, all matters pertaining to the levy and collection of taxes, the payment of moneys, and all acts of the electors must be tried in the court and may not be determined by appeal to the county superintendent or to the superintendent of public instruction.

Too many appeal cases are the outgrowth of differences arising over the location of schoolhouses. This may be eliminated largely if school boards, in choosing locations, will carefully guard the rights of every child. The school board should locate the schoolhouse where it will serve the best interests of all patrons.

It is seldom that the best interests of the schools are served by appeal cases. The feeling engendered over such cases often destroys much of the good the schools might be doing. No case should be appealed except one of grave injustice. Judicious advice given by the county superintendent will, if heeded, do much to bring about an amicable settlement of many difficulties.

A careful study of the laws and decisions thereon by the school officers mingled with good judgment and fair dealings will enable them to administer the laws more justly and intelligently. It will also make them more efficient in their offices and in many instances prevent unfortunate contests that frequently arise in school districts which disturb the whole neighborhood and decrease the efficiency of the school —yet accomplish nothing in the end.

A. M. DEYOE,
Supt. Public Instruction.

December 1, 1915.

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SCHOOL LAW DECISIONS

S. L. CURRY v. DISTRICT TOWNSHIP OF FRANKLIN.

Appeal from Decatur County.

COUNTY SUPERINTENDENT. Has no jurisdiction of an appeal until an affidavit is filed in his office. The appeal must be taken by affidavit.

AFFIDAVIT. An affidavit is a statement in writing of the errors complained of, signed and made upon oath before an authorized magistrate.

JURISDICTION. An application for an appeal filed within thirty days from the act complained of will not give the county superintendent jurisdiction of the case.

NOTICE. The county superintendent should not issue notice of final hearing until the transcript of the district secretary has been filed.

TESTIMONY. Unless obviously immaterial, testimony offered should be admitted and given such weight as it merits.

DISCRETIONARY ACTS. Should not be disturbed except upon evidence of unjust exercise of discretion.

December 16, 1867, at a special meeting of the board, a vote to change the boundaries of subdistricts so as to form a new subdistrict in accordance with the prayer of petitioners, resulted in a tie. From this virtual refusal to act, S. L. Curry appealed to the county superintendent, who on the thirty-first of the same month formed a new subdistrict. Appellant alleges in his affidavit that the county superintendent assumed jurisdiction of this case without warrant of law, that there never was "at any time an affidavit or any other statement in said appeal case filed in the office" of the superintendent, hence the want of jurisdiction.

The "act to provide for appeals," section two, provides that "The basis of proceeding shall be an affidavit, filed by the party aggrieved, with the county superintendent, within the time allowed for taking the appeal." An affidavit is a statement in writing, signed and made upon oath before an authorized magistrate. A county superintendent can have no proper jurisdiction of an appeal case until such affidavit has been filed. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. The affidavit setting forth "the errors complained of in a plain and concise manner," must be in his hands before he is justified in commencing proceedings. The decision of the superintendent recites that the affidavit was filed December 21st, which might be taken as conclusive, if it was not contradicted by the record. The transcript

shows that said affidavit was not subscribed and sworn to until December 28th, hence we do not clearly see how it could have been filed on the 21st.

December 24th, four days before the affidavit was made, and which appellant alleges was never filed with the superintendent, said superintendent gave notice to the parties that the hearing would take place on the 30th. This proceeding, as an appeal case, was entirely unauthorized by law, and as he commenced proceedings in disregard of the plain provisions of the law and without legal jurisdiction, his decision is annulled. It may be said, and not without authority, that as both parties responded to the notice, and came before the superintendent, he thereby acquired jurisdiction, but we feel unwilling to sanction disregard of law by approving such great irregularities.

Without touching the real merits of the questions at issue, the formation of a new subdistrict, which we are willing to leave to the local authorities, we refer briefly to three points of law raised by appellants.

The county superintendent should not issue notice of final hearing until both the affidavit and the transcript of the secretary have been filed in his office.

Though the change of subdistrict boundaries by the board is a discretionary act, it may be reviewed by the county superintendent, on appeal, but the decision of the board should not be disturbed unless said discretionary power has been abused or exercised unjustly.

The county superintendent should have received the remonstrances offered on trial in evidence, and exercised his judgment as to their weight and value.

REVERSED.

D. FRANKLIN WELLS,

March 26, 1868. *Superintendent of Public Instruction.*

ELIAS SIPPLE v. DISTRICT TOWNSHIP OF LESTER.

Appeal from Black Hawk County.

TESTIMONY. At the hearing of an appeal, it is competent for the county superintendent, upon his own motion, to call additional witnesses to give testimony.

RECORDS. In the absence of the allegation of fraud, testimony to contradict or impeach the records of the district cannot be received.

RECORDS. The board may at any time amend the record of the district, when necessary to correct mistakes or supply omissions. And it may upon proper showing be compelled by mandamus to make such corrections.

AFFIDAVIT. The affidavit answers its leading purpose if it sets forth the errors complained of with such clearness that the proper transcript may be secured.

At the regular meeting of the board held September 16, 1867, attended by four of the seven members, motions were made and seconded for the creation of two new subdistricts whose boundaries were described in the motions. In regard to the action on these motions the record of the secretary contains merely the word "carried." At a special meeting, held February 15, 1868, the action of the board in September in relation to the formation of new subdistricts was "reconsidered" and "rescinded." From the February action Elias Sipple appealed to the county superintendent. During the progress of the hearing, which took place March 20, 1868, the county superintendent called

upon one of the four members that attended the September meeting, who testified that he did not vote for the motion to create a new subdistrict. As it thus appeared that the new subdistricts were not established by a vote of a majority of all the members of the board, as required by law, and as said September action was rescinded at a full meeting of the board in February, the county superintendent, considering the formation of the subdistricts illegal and void, dismissed the appeal. From this decision Barney Wheeler appeals.

Appellant alleges substantially that the county superintendent erred as follows: In himself calling a witness to give testimony; in receiving testimony to impeach the district record, which is claimed to be valid and binding after thirty days; in dismissing the appeal; in not establishing the subdistricts.

The law requires the county superintendent to give a "just and equitable" decision, and as the calling of additional witnesses may sometimes enable him to discharge this duty more faithfully, his action in this respect is sustained.

The second error assigned really includes two distinct points, which will be considered separately; and first, in regard to the impeachment of the district record. The law provides for an annual meeting of the electors of the district township, and for semi-annual and special meetings of the board of directors; also that "the secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose." It is a general principle of law that "oral evidence can not be substituted for any instrument which the law requires to be in writing, such as records, public documents," etc. 1 Greenleaf's Evidence, § 86. "It is a well-settled rule that, where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for that, so long as the writing exists and can be produced; and this rule applies as well to the transactions of public bodies and officers as to those of individuals." *The People v. Zeyst*, 23 N. Y., 142. In the case of *Taylor v. Henry*, 2 Pick., 397, the supreme court of Massachusetts held that an omission in the records of a town meeting could not be supplied by parol evidence. Chief Justice Shaw, in discussing the case, said that it would be "dangerous to admit such a proof." Mr. Starkie, in his valuable treatise on evidence, says: "Where written instruments are appointed either by the immediate authority of the law or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and policy to exclude any inferior evidence from being used either as a substitute for such instruments or to contradict or alter them; of principle, because such instruments are, in their own nature and origin, entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience, if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, page 995, volume III, 3d Am. Ed.

The reason of the rule upon which the courts agree with such entire unanimity applies with force in the case now under consideration. The records of the district and board meetings contain a statement of the regulations adopted, and the acts done in the exercise of the powers with which the respective bodies are invested by the law. They present to all the citizens of the district township, in a permanent form, certain and definite information which could be obtained, with equal certainty, in no other way. Memory is defective, but the secretary records the transactions as they occur. The actors

change from year to year, but the record is permanent. And though the admission of oral testimony to alter a record or supply an omission therein might sometimes promote the attainment of justice, the prevalence of such a practice would result in more evil than good. It is held, therefore, that in the absence of alleged fraud the county superintendent errs, in admitting parol evidence to contradict or impeach the record of the September meeting of the board.

In regard to the other part of the second point a few words will suffice. The counsel for appellant urges that though the record of the September meeting was imperfect, the lapse of thirty days made the record valid and binding upon the district. It is true that the right to take an appeal to the county superintendent expires after thirty days, but I am unable to see how the lapse of time will validate what was before invalid. The secretary is the proper custodian of the records of the school district, and before the record of the proceedings of the board has been approved or adopted by the board, the secretary may amend them by supplying omissions, or otherwise correcting them. After they have been approved they may be amended and corrected by direction of the board, even after the lapse of thirty days. In Massachusetts a town clerk is permitted to amend the record in order to supply defects, even after a suit involving a question respecting them has been commenced. I am of the opinion that if the secretary or board of directors decline to make necessary corrections in the record, that a party interested may proceed by mandamus to compel the correction. If the record is to be impeached, it must be, in the absence of fraud, by a direct proceeding instituted for that purpose, and not by a collateral or indirect method. *The People v. Zeyst*, 23 N. Y., 147-8.

The district record in this case is not as full as it might with propriety be. The law provides that the boundaries of subdistricts shall not be changed except by the vote of a majority of the members of the board. The record fails to show that this requirement of the law was complied with at the September meeting. The secretary says that the motion to redistrict "carried." This is his opinion, but he fails to give the fact upon which it is based Four of the seven members were present, but he does not say who, or how many voted for the change. Properly this should have been stated. When, however, the district record declares that a motion was "carried," the law will presume that it was carried in accordance with the requirements of the statute; though there is reason to believe that the presumption in this instance is a violent one. It follows that there was no legal evidence that the subdistricts were not established in accordance with law; hence, the conclusion is inevitable that the county superintendent erred in dismissing the appeal for the cause assigned.

At the commencement of the trial and again during its progress, the defendant moved the county superintendent to dismiss the case on account of the insufficiency of the affidavit. The affidavit of Mr. Sipple is not as full as it is usual to make affidavits in such cases, yet it "set forth the errors complained of" with such plainness and conciseness as enabled the county superintendent to obtain the necessary transcripts, and this is all the law really requires. It has not been customary heretofore to force any particular form of affidavit, and the superintendent's ruling refusing to dismiss on defendant's motion is sustained.

As the testimony appears not to have been all in when the case was dis-

missed by the county superintendent, no opinion can be given in regard to the propriety or necessity of establishing the proposed new subdistricts. The case is therefore returned to the county superintendent, who will proceed with the hearing, first allowing a reasonable time for the correction of the district record or for the enforcement of its correction should such correction be deemed necessary by either of the interested parties. Should the district record be amended so as to show conclusively that the said subdistricts were not legally formed at the said meeting in September, it will follow that the said subdistricts never had a legal existence, and that the plaintiff could not be aggrieved by the action of the February meeting, hence the county superintendent will determine the case in favor of the appellee. Should said record not be amended, or should it be amended so as to show clearly that said subdistricts were established in all respects in conformity with law, the question of establishing the new subdistricts, or more properly retaining their organization, will be determined upon its merits.

REVERSED.

D. FRANKLIN WELLS,

July 23, 1868. *Superintendent of Public Instruction.*

E. J. MINER v. DISTRICT TOWNSHIP OF CEDAR.

Appeal from Floyd County.

CONTESTED ELECTION. The proper method of determining a contested election for school director is by an action brought in the district court.

ELECTION. The certificate of the officers of the subdistrict meeting is the legal evidence of election as subdirector, and as a general rule a board of directors is justified in declining to recognize a person as a member of the board until he produces such certificate.

EVIDENCE. Where the law requires the evidence of a transaction to be in writing, oral evidence can be substituted only if the writing cannot be produced.

QUO WARRANTO. The remedy of a person denied possession of an office to which he has been chosen is an action in court.

At the regular meeting of the board in March, 1868, E. J. Miner appeared and filed his oath of office as subdirector of subdistrict number three, and claimed recognition as a member of the board. The said Miner failed to present the certificate of the officers of the subdistrict meeting, or any other evidence of his election except his own verbal statement. It was alleged in the board that he was not legally elected. Under these circumstances the board refused him a seat and recognized his predecessor as holding over. From this order the said Miner appealed to the county superintendent, who, after a full hearing of the manner in which the election was conducted, reversed the order of the board and directed that the said Miner should be recognized as subdirector of subdistrict number three and as a member of the board of directors. From this decision an appeal is taken by A. J. Sweet, president of the board. The above are but a small portion of the facts presented in the well arranged transcript of the county superintendent, but yet all that are material to the issues involved.

The case presented by these facts is similar to that of *Ockerman v. District Township of Hamilton*, page 77, School Law Decisions of 1868, and must be governed by the same principles. It was there held that the only proper way of determining a contested election or the right of exercising any public office or franchise is by an action in the nature of *quo warranto* brought in the district court. It seems unnecessary to repeat the arguments there used. Reference is made to that case, as well as to the 19 Iowa, 199; 18 Iowa, 59; 16 Iowa, 369; 17 Iowa, 365; and the other cases there cited. The principle involved in the preceding references was recognized by the county superintendent, when he said in his decision that "the board of directors has no jurisdiction to inquire into the legality of the election of its members." When this just conclusion was reached the case should have been dismissed, for the county superintendent can do on appeal only what the board itself might legally have done.

The county superintendent held that as the president of the subdistrict meeting refused to sign a certificate of election for the said Miner, the board might receive other evidence of his election. In this the county superintendent departed from well established legal principles. The school law provides that at the meeting of the electors of the subdistrict on the first Monday in March "a chairman and secretary shall be appointed, who shall act as judges of the election and give a certificate of election to the subdirector elect." It is a well-settled rule that where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted when the writing can be produced; this rule applies alike to transactions of public bodies, officers and individuals.

There can be no doubt that the law contemplates that the certificate of the officers of the subdistrict meeting shall be the legal passport to a seat in the board, and that, as a general rule, a board of directors is justified in declining to recognize a person as a member of the board until such certificate is produced. If the certificate has been given and lost, the accident may be remedied by other testimony. If illegally withheld, the officer may be coerced by mandamus to furnish it. If it has been fraudulently given, the law still provides a remedy.

By the light of the previous principles it is evident that when, under the circumstances, the county superintendent proceeded to investigate the rights of the plaintiff as a school director, he exceeded his jurisdiction, and that his decision must therefore be overruled. The law requires that the plaintiff, Miner, shall seek his remedy in the courts. The decision of the county superintendent is therefore reversed and the case dismissed. REVERSED.

D. FRANKLIN WELLS,

July 29, 1868. *Superintendent of Public Instruction.*

N. R. HOOK v. INDEPENDENT DISTRICT OF FREMONT.

Appeal from Mahaska County.

SCHOOL PRIVILEGES. Are not acquired by temporary removal into a district for the purpose of attending school.

At a meeting of the board an order was made excluding one George Check from school. From this order Dr. N. R. Hook, with whom the boy was at the

time living, appealed to the county superintendent, who affirmed the order of the board, and Hook again appealed.

The ground upon which the boy was debarred from school was that he was not a *bona fide* resident of the district, and this is fully sustained by the circumstances of the case as shown by the weight of the evidence as adduced before the county superintendent. The apparent primary purpose of George Check in going to live with Dr. Hook was that he might attend the school at Fremont, and after the term of school should expire his further continuance at Hook's would be uncertain. He did not go there with the intention of remaining, but the intention to return to his father's house seems to have been manifested in the contract or agreement made with Hook.

Counsel for appellant argues that the law should not be technically construed, but that it should receive a liberal construction, and in this he is correct. It should receive such a construction as that all the youth of the state, without regard to race or condition in life, can with equal facility participate in the benefits of our free schools. There is evidence that the schools in Fremont are so crowded that many of the youth of the district are unable to gain admission, and the law gives to them the prior claim. The board should see that the children of the district are first accommodated, and then, if not detrimental to the interests of the school, it may admit, in its discretion, those from outside districts upon such terms as it may agree.

Believing that the county superintendent properly sustained the board of directors, his decision is hereby AFFIRMED.

A. S. KISSELL,

May 1, 1870. *Superintendent of Public Instruction.*

Z. W. REMINGTON v. DISTRICT TOWNSHIP OF BOOMER.

Appeal from Pottawattamie County.

JURISDICTION. The county superintendent does not have jurisdiction of cases involving a money demand.

SCHOOL ORDERS. When improperly issued, a proper remedy is injunction.

On the 12th day of October the board met in special session and made a settlement with one L. S. Axtell, who was the contractor for the erection of certain schoolhouses in said district township. From the action of the board Z. W. Remington appealed to the county superintendent, who dismissed the appeal upon the ground that the settlement with Axtell was for a money demand, and therefore involved a question over which he could exercise no jurisdiction. Remington again appeals.

If there was anything wrong in the action of the board issuing orders in favor of Axtell for the payment of his claim for building the schoolhouses that would render them invalid, his remedy, if any, would have been by injunction to restrain the payment of such orders, or by some other proper action in the civil courts, and not by appeal to the county superintendent, as the latter tribunal is not clothed by the statute with the authority to inquire into or determine the validity of school orders. The county superintendent, therefore, very properly decided to dismiss the appeal, and his order in the case is hereby

AFFIRMED.

A. S. KISSELL,

May 17, 1870. *Superintendent of Public Instruction.*

W. P. DAVIS v. DISTRICT TOWNSHIP OF MADISON.

Appeal from Fremont County.

CONTRACTS. Made by a committee, require the approval of the board in session. SCHOOL FUNDS. The treasurer is the proper custodian of all funds, and may legally pay them out only upon orders specifying the fund upon which they are drawn and the specific use to which they are applied.

SUBDIRECTOR. The subdirector may expend money in his subdistrict only in the manner authorized by the board.

CLAIMS. Just claims against the district can be enforced only in the courts. MANDAMUS. Is a remedy if the board refuses to carry out a vote of the electors. SUBDISTRICT. A subdistrict is not a corporate body, and has no control of any public fund.

The electors on the eleventh day of March, 1871, voted a tax of two and one-half mills on the taxable property of the district township for schoolhouse purposes, and directed that three hundred dollars of the amount thus raised should be used for the erection of a schoolhouse in subdistrict number nine.

March 20, 1871, W. P. Davis, subdirector of subdistrict number nine, was appointed a committee to build a schoolhouse in said subdistrict. The house having been completed, at a special meeting of the board held June 1, 1872, it was moved that the report of the committee be received and the schoolhouse be accepted; also, that the secretary be instructed to draw an order on the treasurer for three hundred dollars for subdistrict number nine. Both motions were lost, from which action the said W. P. Davis appealed to the county superintendent, who on the ninth day of August, 1872, reversed the action of the board. The district township, through its president, W. H. Gandy, appeals.

The history of this case very fully illustrates the loose and irregular manner in which school officers too frequently transact official business. Section 15 of the School Laws provides that the board "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district, but before erecting any schoolhouse they shall consult with the county superintendent as to the most approved plan of such building."

If the contract is made by a subdirector or committee of the board, it should in all cases be approved by the board before work is commenced.

A misapprehension often exists as to the manner in which school funds should be disbursed. The treasurer is the proper custodian of all funds belonging to the district township and the law provides that he "shall pay no order which does not specify the fund on which it is drawn, and the specific use to which it is applied," that is, for work done, material furnished, or the like.

The board is also required to "audit and allow all just claims against the district, and no order shall be drawn on the district treasury until the claim for which it is drawn has been so audited and allowed." This rule applies equally where funds are voted by the district township for the purpose of building schoolhouses in particular subdistricts, also where taxes have been raised on the property of subdistricts, in accordance with the proviso of section 28. Such funds, or so much of them as may be required to carry out the vote of

the electors, should be devoted to the specific object for which they were voted, but the disbursement should, in all cases, be under the direction and authority of the board. Boards have no authority to give subdirectors money to use in their subdistricts for building schoolhouses or any other purpose, nor subdirectors to use money so received. A subdistrict is not a corporate body and has no control of any public fund.

If Mr. Davis has a just claim against the district township of Madison which the board refuses to allow, or if the board refuses to apply the amount voted by the electors to the specific object for which it was designed, the erection of a schoolhouse in subdistrict number nine, the civil courts, only, can furnish a means of redress. REVERSED.

ALONZO ABERNETHY,

October 30, 1872. *Superintendent of Public Instruction.*

J. W. RANDALL v. DISTRICT TOWNSHIP OF VIENNA.

Appeal from Marshall County.

SCHOOLHOUSE. The board may legally remove a schoolhouse from one subdistrict to another only by vote of the electors.

SCHOOLHOUSE. When the electors have voted to remove a schoolhouse from one subdistrict to another the board must execute such vote, and from its action in so doing no appeal can be taken.

INJUNCTION. The execution of a fraudulent vote of the electors may be prevented by a writ from a court of law.

At the district township meeting held the second Monday in March, 1873, it was voted to remove the schoolhouse situated in subdistrict number four into subdistrict number three. On the seventeenth day of March, the board ordered the removal of the schoolhouse, in accordance with said vote of the electors. From this action, appeal was taken to the county superintendent, who reversed the action of the board. The district township, through its president, appeals.

Section seven, School Laws of 1872, provides that the electors shall have the power "to direct the sale, or other disposition to be made of any schoolhouse"; also "to vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of necessary schoolhouses for the use of the respective subdistricts." Section fifteen provides that the board "shall make all contracts, purchases, payments and sales necessary to carry out any vote of the district." Section sixteen provides that the board "shall fix the site for each schoolhouse."

From the law as above quoted, we understand that the electors may vote a tax for the erection of a schoolhouse in any particular subdistrict, or may direct the removal of one already built, from a subdistrict, and that the board determines the site within a subdistrict, but has no authority to remove a schoolhouse from a subdistrict without affirmative action of the electors, such action, however, being taken, the board must execute their vote, if in accordance with law. From the action of the board in thus executing the vote of the electors no

appeal can be taken. If the vote of the electors is contrary to law, its execution may be prevented by injunction; if unwise, the electors, themselves, must bear the consequences.

REVERSED.

ALONZO ABERNETHY,

July 11, 1873. *Superintendent of Public Instruction.*

D. K. TAYLOR v. INDEPENDENT DISTRICT OF ELDON.

Appeal from Wapello County.

APPEAL. Appeal may not be taken from an action or order complying with the terms of a contract previously made, nor from an action authorizing the issuance of an order in payment of a debt contracted by previous action of the board.

APPEAL. A case whose main purpose is to determine the validity of an order on the district treasury, or the equity of a claim, cannot be entertained on appeal to the county superintendent.

SCHOOL FUNDS. The courts of law alone can furnish an adequate remedy, if the law has been violated and the money of the district has been misappropriated.

From the transcript, it appears that on the third day of December, 1873, the board passed an order authorizing the payment of five per cent commission for negotiating the district bonds, and on the same day another authorizing D. P. Stubbs to negotiate said bonds. On the third day of February, 1874, the board passed an order instructing the president and secretary to draw an order for ninety dollars on the district treasury in favor of said D. P. Stubbs, for services rendered in negotiating said bonds, in accordance with the previous action of the board on December 3, 1873. From the action of the board in issuing said order of ninety dollars, this appeal was taken. The county superintendent dismissed the case, on the ground that it was an action authorizing the payment of money, and a decision thereon would be equivalent to rendering a judgment for money, which is prohibited by the provisions of section 1836. D. K. Taylor again appeals.

Appeal may be taken from any action of the board which authorizes the making of a contract, but not from a subsequent action or order complying with the terms of a contract previously made, nor from an action authorizing the issuance of an order in payment of a debt contracted by a previous action.

The order appealed from in this case is not a new action of the board, but a necessary result of the order of December 3, 1873. If the first action was legal and proper, the last is both proper and necessary, the services having been performed. Any interested party might have appealed at the proper time, from the action of December 3, 1873, authorizing the payment of five per cent commission for negotiating bonds or authorizing the appointment of an agent therefor. But the time for an appeal, thirty days, having expired, appeal can not now be taken from the subsequent action, which is simply carrying out its previous action, and the terms of the contract made thereunder.

To determine the validity of an order on the district treasury, or the equity of a claim, is equivalent to the rendition of a judgment for money, and a case whose sole purpose is to determine this question can not be entertained on ap-

peal. The courts of law alone can furnish an adequate remedy, if the law has been violated, or the interests of the district have suffered by the making of contracts or the issuing of orders for money on the treasury.

AFFIRMED.

ALONZO ABERNETHY,

May 5, 1874. *Superintendent of Public Instruction.*

E. WATSON v. DISTRICT TOWNSHIP OF EXIRA.

Appeal from Audubon County.

PUNISHMENT. The punishment of a pupil with undue severity, or with an improper instrument, is unwarrantable, and may serve in some degree to indicate the animus of the teacher.

PUNISHMENT. In applying correction, the teacher must exercise sound discretion and judgment and should choose a kind of punishment adapted not only to the offense, but to the offender.

Charges were preferred against E. E. Watson for harsh and unreasonable punishment of a pupil, and upon investigation the teacher was discharged. From this action of the board he appealed to the county superintendent, who reversed its action, and the district appeals.

From the evidence, it appears that the pupil upon whom the punishment was inflicted was a boy thirteen years of age, and that the offense was such that punishment was deserved. The instrument selected was a hickory stick, three-fourths of an inch in diameter at one end, and one-half inch at the other, and fifteen or eighteen inches long. The punishment was inflicted by striking upon the palm of the hand from eight to twelve strokes. It appears that the boy's hand was thereby disabled for some days.

It is alleged by the teacher that the punishment was inflicted for the good of the school, and that it was without malice on his part. We consider the selection of such an instrument for the punishment of a pupil injudicious, unwarrantable, and dangerous, and that the consequences might be fraught with the gravest results, and that such selection may serve in some degree, to indicate the animus of the teacher.

REVERSED.

ALONZO ABERNETHY,

June 6, 1874. *Superintendent of Public Instruction.*

SANFORD HARWOOD v. INDEPENDENT DISTRICT OF CHARLES CITY.

Appeal from Floyd County.

PUNISHMENT. The right of the parent to restrain and coerce obedience in children applies equally to the teacher or to any one who acts in *loco parentis.*

RULES AND REGULATIONS. Boards of directors and their agents, the teachers, may establish reasonable rules for the government of their schools.

RULES AND REGULATIONS. The teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school.

RULES AND REGULATIONS. The pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher.

RULES AND REGULATIONS. Open violation of the rules can not be shielded from investigation under the plea that it invades the rights of conscience.

BOARD OF DIRECTORS. The board shall be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

This case involves the right of a teacher to require a pupil to answer questions concerning his conduct in school, or to testify against himself.

Burritt Harwood, a member of the high school department, having broken certain rules of the school, was suspended by the superintendent for refusing to answer a question relating thereto. The pupil's father petitioned the board to restore the pupil. The board, having investigated the facts, adopted the following: "Resolved, That the school board sustain Prof. Shepard in his suspension of Burritt Harwood; provided, Burritt Harwood be reinstated if he answer the question, for the refusal to answer which he was suspended, subject to such further action as may be taken by the principal or school board for making and circulating the caricature." The president and four other members voted for, and one against the resolution. From this action of the board, S. Harwood appealed to the county superintendent, who reversed its action. The board appeals.

The power of the parent to restrain and coerce obedience in children can not be doubted, and it has seldom or never been denied. This principle applies equally to the teacher or to any one who acts in *loco parentis*. Boards of directors, and their agents, the teachers, may establish all reasonable and proper rules for the government of schools, and to control the conduct of pupils attending the same. "Any rule of the school not subversive of the rights of the children or parents or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper." *Burdick v. Babcock*, 31 Iowa, 562.

The superintendent had occasion to leave the high school in charge of his assistant while he should attend to official duties elsewhere. On his return, about 4 p. m., the assistant reported that there had been much disorder on the part of some of the pupils, and that she required several of the pupils to remain and report their misdemeanors to the superintendent. Burritt Harwood, being called upon, said in substance: "I have two misdemeanors to report: I threw snow in the lower hall during recess, and I passed a piece of paper across the aisle to my brother's desk." Both are recognized as violations of the rules of the school. The nature and magnitude of the first are readily discernible, and need no further investigation; not so of the second; much depends upon the character of the "piece of paper," whether simply blank paper or containing writing or other marks. Being asked to state the nature of the paper, he at first answered evasively. Being further questioned, replied that it was "pictorial," that it was a "burlesque or caricature," that "it represented the schoolhouse and some person or persons," that "the person or persons represented were connected with the school." The question, "whom he had intended to burlesque," after some hesitation he declined to answer. For this act of disobedience he was suspended.

The question which he refused to answer appears to differ in no essential

feature from those previously answered. By it the teacher simply sought to discover an additional fact in connection with the case. If he had a right to ask the former, he had the latter. If there is any reason why the pupil had the right or should claim the privilege of declining to answer the last, he should have stated it. Certainly no good reason appears from the nature of the offense, and the degree of punishment which it merited depended upon the information which the teacher sought to obtain by this and the previous question. If the paper contained simply the solution of a problem or something connected with his lesson, it merited one degree of punishment; if its purpose was to create merriment among the pupils, thus diverting their attention from their studies, it required another degree; if by it the pupil sought to bring ridicule upon a teacher, to the prejudice of good order and government of a school, still another; each would be a violation of the rules, but not each equally punishable. The claim of appellee that it was an attempt to pry into the secrets of the heart, and was a violation of the right of conscience, is scarcely sustained by the facts. The question, "whom did you intend to represent?" is essentially equivalent to "whom did you represent." Its purpose evidently was not to find out the thought or intent, but the act of the pupil. The question was simply what was the character of the picture drawn and circulated to the disturbance of the school. It does not appear how the rights of conscience would be violated in answering the question. It may be true that the picture itself, if produced, would furnish the best evidence, but the teacher clearly had the right, in its absence, and knowing nothing of its nature beyond what the pupil had already revealed, to seek this information directly and immediately by proper questions. Nor can the pupil shield himself under the provisions of the law that a prisoner at the bar can not be compelled to answer questions which will tend to render him criminally liable or expose him to public ignominy. He is, in no proper sense, accused of crime before a court of law, authorized to sit in judgment under a criminal code.

The picture, which was afterward produced, reveals anything but a right spirit in the pupil. Probably no one who has seen it doubts that it is a coarse caricature of the superintendent and his assistant. His refusal to answer was evidently not that he could not conscientiously do so, nor that it would tend to criminate himself, but was a deliberate act of insubordination. All the attendant circumstances, the evasive and studied replies to the superintendent's questions, the caricature itself, and its circulation through the school during the absence of the superintendent, together with a previous malicious caricature of the same nature, all reveal a disregard for the regulations of the school, the respectful conduct due from a pupil, and an animus toward the teacher anything but proper.

In our opinion, unnecessary stress was laid, in the trial before the superintendent, upon the technical ground of suspension by the superintendent. The board having had the whole subject under investigation, including statements of the offenses from both the superintendent and the pupil, sustained the superintendent, or in other words, suspended the pupil conditionally from the school, as it probably had a right to do for any one of the offenses named. This being a discretionary act, due weight must be given to such action by an appellate tribunal, especially should the board be sustained in all legitimate and reason-

able measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

REVERSED.

ALONZO ABERNETHY,

June 8, 1874. *Superintendent of Public Instruction.*

J. W. HUBBARD v. DISTRICT TOWNSHIP OF LIME CREEK.

Appeal from Cerro Gordo County.

APPEAL. The execution by the board of the vote of the electors upon matters within their control is mandatory; from such action of the board no appeal can be taken. If such action is tainted with fraud, an application to a court of law is the proper remedy.

BOARD OF DIRECTORS. The board, though not bound by a vote of the electors directing the precise location of a schoolhouse site, is required to so locate it as to accommodate the people for whom it is designed.

BOARD OF DIRECTORS. If in the selection of a site the board violates law or abuses its discretionary power, its action may be reversed on appeal.

CERTIORARI. A fraudulent or illegal action may be corrected by application to a court for a writ of certiorari.

The electors of the district township voted a tax to build a schoolhouse on what is known as the Simons road, near where it crosses the Central railroad. On a separate motion, the board was instructed to sell the schoolhouse known as number three. In accordance with the first mentioned action, the board located a schoolhouse site on said road, fifty feet from said crossing. From this action appeal was taken, the appellant claiming it to be a relocation of the site known as number three, and that such action was with the express intention of selling the schoolhouse and abandoning the site thereof. The county superintendent reversed the action of the board and the district township appeals.

The district township coincides with a congressional township in boundaries and extent, and is comprised in one subdistrict. It is claimed that the action of the district township meeting did not represent the wishes of the people; that there are ninety-five voters in the district, and but twenty-seven were present at such meeting; also that in the location of the site the board did not consult the convenience of the people.

Section 1717 provides that the electors, when legally assembled at the district township meeting, shall have power "to direct the sale or other disposition to be made of any schoolhouse, or site thereof, and of such other property, personal and real, as may belong to the district." Section 1723 provides that the board "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district." Section 1724 provides that the board "shall fix the site for each schoolhouse, taking into consideration the geographical position and convenience of the people of each portion of the subdistrict."

The execution of the vote of the electors by the board is mandatory; from its action in so doing, no appeal can be taken. In case such action is in any manner tainted with fraud, an application to a court of law is the proper remedy.

The power to locate schoolhouse sites is vested originally in the board. Although the board has authority to locate schoolhouse sites, yet money legally

voted by the electors for a specific purpose, must be expended in accordance with such vote; if voted to erect a schoolhouse in a certain subdistrict, it can not legally be used to build a schoolhouse in another. While any directions of the voters attempting to locate precisely a schoolhouse site, are void, yet the board is bound so to locate it as to accommodate the people for whom designed; in the absence of such instructions, the board may exercise more widely its discretion in fixing schoolhouse sites. If in the performance of this duty it violates law, acts with manifest injustice, or in any manner shows as abuse of discretionary power, its action may properly be reversed by the county superintendent. In this case we do not discover that the board has in any manner failed in the proper performance of its duty. REVERSED.

ALONZO ABERNETHY,

July 7, 1875. *Superintendent of Public Instruction.*

E. GOSTING v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Plymouth County.

SCHOOLHOUSE SITE. The action of a committee appointed by the board to locate a site is of no force until officially adopted by the board while in session.

SCHOOLHOUSE SITE. Subdistrict boundaries can not be changed in appeal relating solely to locating a site, nor can a site be located with the expectation that boundaries will be changed, unless such intention of the board is shown.

JURISDICTION. The county superintendent has jurisdiction only of the matter to which the appeal relates.

APPEAL. The right of appeal is confined to persons injuriously affected by the decision or order complained of. Ordinarily a person living in one subdistrict can not appeal from an action of the board locating a site in another.

A committee appointed to locate a schoolhouse site for the accommodation of the residents of subdistricts number seven and nine, reported that it had selected the northwest corner of section ten, and afterward that it had chosen instead, a site about eighty rods east of the northwest corner of section eleven. There is no record showing that any action was taken in relation to these reports.

Subdistrict number nine consists of the east one-half of congressional township number 90, range 45. The appellant resides in subdistrict number seven, which comprises the west one-half of the same congressional township. The decision of the county superintendent is as follows: "After considering the evidence and the plat introduced, I sustain the committee in its first location at the northwest corner of section ten of said township." D. M. Relyea appeals.

The power to locate schoolhouse sites is vested in the board of directors. The action of a committee appointed by the board to locate a schoolhouse site is of no force until its report is officially adopted by the board while in session.

Section 1725 provides that the board "shall determine where pupils may attend school; and for this purpose may divide their district into such subdistricts as may by them be deemed necessary." The object of dividing a district township into subdistricts is to determine where pupils shall attend school. While it is frequently the case that pupils may more conveniently attend school in an adjoining subdistrict, it would obviously be improper to locate a schoolhouse site expressly for the accommodation of such pupils, unless with the intention of

subsequently making a redivision of the district township. The county superintendent has jurisdiction only of the matter to which the appeal relates. He can not properly, upon an appeal relating to the location of a schoolhouse site, change subdistrict boundaries, nor can he locate a schoolhouse site with the expectation that such boundaries will ultimately be changed, unless such is shown to be the intention of the board.

The right to appeal from actions of the board is confined to persons injuriously affected by the decision or order of which complaint is made. Ordinarily, a person living in one subdistrict can not properly appeal from an action of the board locating a schoolhouse site in another.

The decision of the county superintendent is set aside, and the location of the schoolhouse site is left to the discretion of the board. REVERSED.

ALONZO ABERNETHY,

September 7, 1875. *Superintendent of Public Instruction.*

J. E. BROWN, v. DISTRICT TOWNSHIP OF VAN METER.

Appeal from Dallas County.

APPEAL. The adoption of the committee's report in favor of retaining the old schoolhouse site is an action from which appeal may be taken.

BOARD OF DIRECTORS. The action of the board can not be reversed upon the allegations of appellant without proof, or by reason of failure to make defense.

BOARD OF DIRECTORS. The acts of the board are presumed to be regular, legal and just and should be affirmed unless proof is brought to show the contrary.

SUBDISTRICT BOUNDARIES. The acts of a board changing subdistrict boundaries and locating schoolhouses are so far discretionary that they should be affirmed on appeal, unless it is shown beyond a doubt that there has been an abuse of discretion.

COUNTY SUPERINTENDENT. The weight that properly attaches to the discretionary actions of a tribunal vested with original jurisdiction does not apply to the decisions of an inferior appellate tribunal.

The county superintendent reversed the action of the board in selecting the old site in subdistrict number two, upon which to erect a schoolhouse, and located the site about eighty rods westward of the old one. From this decision the district township appeals, claiming in substance that the county superintendent erred as follows: That there was no action of the board relative to the selection of a schoolhouse site in subdistrict number two from which an appeal would lie; that the board failed, by reason of a misunderstanding, to appear and defend, and that it was unjustly refused a rehearing; that the old site was suitable, convenient and at the center of population, both present and prospective, and that the reversal of the action of the board was without sufficient cause, there being no evidence that it abused its discretionary power or acted with injustice.

From the transcript, it appears that a committee was appointed to select a site for the erection of a schoolhouse in subdistrict number two; that it reported in favor of the old site, and that its report was adopted by the board. The law provides that an appeal may be taken by any party aggrieved, from any order or decision of the board.

That there was an action of the board, and that the subject-matter to which such action relates is the location of a schoolhouse site in subdistrict number two, there can be no reasonable doubt, hence the action of the board was subject to appeal, and such appeal gave to the county superintendent jurisdiction in the matter of location of said schoolhouse site.

It is the duty of the county superintendent to give due notice to all parties directly interested in an appeal from the board, and to afford full opportunity for the presentation of evidence, but the action of the board can not properly be reversed upon the allegations of the appellant without proof, or by reason of the failure of the board to be present and make defense. The acts of the board are presumed to be regular, legal and just, and should be affirmed by the county superintendent, unless proof is brought to show the contrary. In this case, however, the board appears to have had due notice and ample opportunity to defend the case. It is not claimed that any additional evidence could be produced that would materially affect the issue; but that the board, understanding through popular report that the case was withdrawn, failed to be present at the trial, and upon this ground asks for a rehearing, which was very properly refused.

The site selected by the county superintendent is nearly central, being eighty rods west of that chosen by the board. Both appear to be suitable. The eastern part of the subdistrict is mostly prairie land, while the western portion is, to a considerable extent, timber land.

The evidence as to which site will better serve the interests and convenience of the residents of the subdistrict is conflicting. The board is entitled to the benefit of any doubt upon this point. Unless it is clearly proven that it has violated the law, abused its discretionary power, or has acted with manifest injustice, its action should be affirmed.

It is urged by the appellee that the same weight attaches to actions of an inferior appellate tribunal, upon appeal, that is given to tribunals having original jurisdiction. It is held that the action of the board in matters of which it has original jurisdiction, is alone entitled to this consideration by any superior tribunal upon appeal.

REVERSED.

ALONZO ABERNETHY,

September 17, 1875. *Superintendent of Public Instruction.*

MARY M. THOMPSON v. DISTRICT TOWNSHIP OF JASPER.

Appeal from Adams County.

TEACHER. When a teacher is dismissed in violation of his contract, an action in the courts of law will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal.

TEACHER. The teacher is entitled to the counsel and co-operation of the subdirector and board in all matters pertaining to the conduct and welfare of the school.

The board discharged the teacher in one of the public schools of the district for dereliction of duty. She applied to the county superintendent, who reversed its decision; from this action, the board, through its president, appeals.

At the hearing before the county superintendent, the board filed a motion to dismiss the case for want of jurisdiction, insisting that the teacher having been

dismissed in accordance with the provisions of section 1734, her proper remedy was an action at law for damages.

When a teacher is dismissed in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy. When discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right to appeal to the county superintendent, who is the proper officer to review questions of this character, and to determine whether the board has in the exercise of its authority violated the law or abused its discretionary power. Questions concerning the validity of contracts, the right to recover for services performed, and the interpretation of law, belong especially to judicial tribunals. Questions concerning the character and qualifications of the teacher, and his management of the school, are by appeal within the jurisdiction of the county superintendent. The motion to dismiss was properly overruled.

The charges of dereliction were want of promptness in commencing school in the morning, and an occasional refusal to hear the recitation of one or more of her pupils. For this dereliction there appears to have been some extenuating circumstances. Under the contract, it was the subdirector's duty to have fires built. The boy employed to do this work often failed to have the schoolhouse in comfortable condition at nine o'clock. The teacher usually made up lost time by teaching after four o'clock, and there is no evidence that the subdirector or board ever advised her with regard to the performance of her duties. The board convened at the schoolhouse without previous notice to the teacher, and after taking the testimony of pupils, unanimously voted to discharge her.

AFFIRMED.

May 8, 1876. ALONZO ABERNETHY,
Superintendent of Public Instruction.

S. W. WOODS *et al* v. DISTRICT TOWNSHIP OF BRIGHTON.

Appeal from Cass County.

BOARD OF DIRECTORS. The acts of the board must be presumed to be regular, and should be affirmed unless positive proof is brought to show the contrary.

SCHOOLHOUSE SITE. The prospective wants of a subdistrict may properly have weight in determining the selection of a site, when such selection becomes necessary, but not in securing the removal of a schoolhouse now conveniently located.

SCHOOLHOUSE SITE. To make a distinction between the children of freeholders and those of tenants in determining the proper location for a schoolhouse, is contrary to the spirit and intent of our laws.

The board by a vote of five to two rejected a petition asking the removal of the schoolhouse in subdistrict number eight. On appeal, the county superintendent reversed the action of the board, and ordered the removal of the schoolhouse to the place named in the petition. Wm. F. Altig appeals.

Subdistrict number eight contains sections 27, 28, 33, 34, and sixty acres lying in section 32, and has a good commodious schoolhouse, erected three years ago, one-half mile west of the center, on a public road passing east and west through the center of the subdistrict. There are about thirty children of school

age in the subdistrict, twenty-two of whom reside in the western half, and nineteen west of the present site. All those residing east of the present site, except one child, are within one and a half miles of the schoolhouse, while by the proposed removal, a large number would be at a greater distance.

The action of the board in refusing to remove a schoolhouse should not be interfered with on appeal, except upon evidence of violation of law, or abuse of discretionary power. In this case there is no evidence of such abuse. The prospective wants of a subdistrict may properly have weight in determining the selection of a site upon which to build a schoolhouse, when such selection becomes necessary, but not in determining the removal of a house, located conveniently for the present wants of the subdistrict.

It appears that a considerable portion of the school population consists of the children of tenants, and much stress is laid upon the assumed distinction that should be made between the children of tenants and those of freeholders, in determining the proper location of the schoolhouse. Distinctions based upon the ownership of property or permanence of residence are not made in the law, would not well comport with the fundamental principles upon which our public school system is based, and should not have weight in determining the location of schoolhouse sites. It is the duty of the board to provide equal school facilities for the youth of the district as far as practicable, regardless of considerations relating to permanence of residence. The schoolhouse may properly be removed whenever the conditions of the subdistrict require it, but unnecessary expense should not be incurred in such removal in anticipation of possible, or even probable changes of this character. REVERSED.

July 31, 1876. ALONZO ABERNETHY,
Superintendent of Public Instruction.

J. N. ARTHUR, *et al* v. INDEPENDENT DISTRICT OF FAIRWAY.

Appeal from Adams County.

SCHOOLHOUSE SITES. The necessity of the present must be observed in locating schoolhouse sites, in preference to the probabilities of the future.

TESTIMONY. New testimony can be introduced only when the facts materially affecting the case could not have been known before the trial.

REMANDING OF CASES. When the evidence discloses that the action of the board was unwarranted, and the facts are not sufficiently shown to determine what should be done, the case should be remanded to the board.

In this case the board made an order relocating the schoolhouse site; from this order J. N. Arthur and others, residents of the district, appealed to the county superintendent, and upon his affirming the action of the board, to the superintendent of public instruction.

The district consists of sections one, two, eleven, twelve, thirteen and fourteen, and the old schoolhouse stands near the southwest corner of the southeast quarter of section one. The proposed new site is in the northwest corner of the southwest quarter of the northwest quarter of section twelve, on a public highway and one-quarter of a mile north of the geographical center of said district.

The grounds of objection by the appellants to the removal are substantially, that the new site is on low bottom lands and subject to overflow, not accessible at all times of the year, and that it is not as near the center of the school population as the old site. They also suggest that a location at the cross roads one-half mile east of the new site is better ground and more convenient to the people. In fixing the schoolhouse site, the geographical position and the convenience of the people of each portion of the district should be considered.

From the large amount of testimony, it is evident that the new site chosen is in a low place, and an affidavit sent to this office, and signed by a number of residents, proves beyond question that the site has been overflowed for several days of the last month. By a close comparison it is found that the number of residents who will have their distance to school increased by choosing the new site, is greater than those who will have their distance diminished. By locating the schoolhouse at the cross roads, one-half mile east of the proposed new site, which location is claimed to be higher, and therefore less liable to overflow, three-fourths of the residents will have their distance diminished by forty to one hundred and sixty rods.

Although it may be true, as affirmed in the testimony, that the western part of the district is as capable of settlement as the eastern part, the necessities of the present must be observed in locating schoolhouse sites, in preference to the probabilities of the future. While it is the rule of this department to sustain discretionary acts of the board, it seems that in this case the true interest of all concerned, and justice to a large portion of the people, demands that the schoolhouse should not be moved to the new site chosen.

To what extent the high waters of last month did affect the other locations under consideration, is not known to this department; it is therefore best to let the matter come up anew before the county superintendent for a rehearing. The decision of the county superintendent is therefore reversed, and the case remanded for a rehearing, with the direction from this department that the proposed new site is an unsuitable one for school purposes.

REVERSED.

C. W. VON COELLN,

October 31, 1876. *Superintendent of Public Instruction.*

WM. DONALD V. DISTRICT TOWNSHIP OF SOUTH FORK.

Appeal from Wayne County.

SALARY OF TEACHERS. The salary of teachers should be in proportion to their ability and responsibility, and not equal when these differ materially.

SALARY OF TEACHERS. The control of salaries is wholly within the power of the board and can not be determined by an appeal, because it is not within the jurisdiction of county or state superintendent to order the payment of money.

EXPLANATORY NOTES. Notes to the school law, while proper aids to school officers, have not the binding force of law, and a non-compliance with them is not necessarily a violation of law.

SCHOOLS. The wealthier portions of the community should aid their neighbors in sustaining good schools.

On the eighteenth day of March, 1878, the board made an order fixing the salaries of teachers for the summer schools at the uniform price of twenty dollars per month. From this action William Donald appealed to the county superintendent, who affirmed the action of the board. From his decision William Donald appeals.

It is alleged by the appellant that the county superintendent erred in deciding that the board did not violate law in voting that the same amount of salary should be paid to the teacher in each subdistrict. It is claimed that the board should have provided for a higher salary in some schools of the township.

The difficulty with appellant's counsel is that he believes the note to be a part of the law. My predecessor gave his own views of the employment of teachers and I most fully agree with him in his view. The law leaves the whole matter to the board and presumes that it will deal equitably. Unfortunately, selfishness is a nearly universal characteristic of human kind, and too often the majority, representing weak subdistricts, weak both in numbers and in property, demands an equal distribution of the money on hand for teachers' pay.

The law organizing the rural independent districts, passed in 1872, arose from the feeling that this selfishness was working injustice to little towns and wealthy and populous subdistricts. The creation of these independent districts works an injustice to the weaker districts, for it is proper and desirable that the wealthier districts should aid their weaker neighbors to sustain fair schools.

With regard to this case. we do not see wherein the board violated law. The idea of prejudice is slightly apparent from the testimony, but not sufficiently to reverse the action of the board. That equity has not been observed seems very evident, for it must be presumed that a larger school population requires a better teacher, and if a better and more experienced teacher is needed, a better salary ought to be paid. There are other considerations. Usually the expense of living is greater in the town than in the country. It is also the probability that a larger tax is paid by the town than by the country.

We are not able at this distance to determine whether twenty dollars is a sufficient compensation for the teacher of subdistrict number four of South Fork. But if twenty dollars is only sufficient compensation for the country-subdistricts, it is our belief that a higher salary should be given the teacher in the town.

It is out of our jurisdiction to give advice to the board what to do in this case, after determining that we have no power to reverse its action, but we suggest that equity would be served if it should pay the five dollars per month assumed by Mr. Anderson. After giving our views thus in full, we must agree with the county superintendent, and his decision is therefore AFFIRMED.

C. W. VON COELLN,

June 29, 1878. *Superintendent of Public Instruction.*

JAMES JACOBY *et al* v. INDEPENDENT DISTRICT OF NODAWAY.

Appeal from Adams County.

SCHOOLHOUSE SITE. A schoolhouse site fixed by county or state superintendent affirming the discretionary act of the board, allows the board to exercise its discretion again, especially if material changes have occurred.

DISCRETIONARY ACTS. Suggestions from the electors upon matters entirely within the control of the board will in no manner prevent the fullest exercise of the discretion vested in the board by the law.

SCHOOLHOUSE SITE. The endeavor to show regard for the expressed wishes of the electors in the choice of a site will be an added reason in support of the action of the board.

In the summer of 1877, the board located a schoolhouse site, selecting one not desired by a large majority of the electors, as expressed at an informal meeting called by the board. An appeal was taken to the county superintendent, who reversed the action of the board, and in turn to the superintendent of public instruction, who reversed the decision of the county superintendent, thereby sustaining the action of the board, on the ground that the abuse of the discretion given by the law to the board, as charged, was not proved.

Since the decision above referred to was rendered, a dwelling has been erected within twenty rods of the site chosen. Also, a material addition has been made to the district on its east side of a strip of land three miles in length and one-half mile in width.

At a meeting of the board held April 22, 1878, it relocated the schoolhouse site, choosing the old site in place of the one selected by it last year. From its action, James Jacoby and others appealed to the county superintendent, who affirmed the order of the board. D. Shipley and Ed. Kennedy appeal.

This case was before us last year and we affirmed the action of the board in selecting the new site, sustaining the discretionary act of the board. Hence, the principle that a site selected by the county or state superintendent cannot be changed unless there have been material changes in the district, does not apply. There have been changes by the addition of new territory and a dwelling being erected within less than forty rods of the proposed site. The choice of the old site is in conformity with the wish of a majority of the electors, and does not prove any abuse of discretion, much less a violation of law. The action of the board is sustained, and the decision of the superintendent AFFIRMED.

C. W. VON COELLN,

August 26, 1878. *Superintendent of Public Instruction.*

L. E. CORMACK v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Adams County.

JURISDICTION. An appeal will not lie to enforce a contract.

JANITORIAL SERVICES. If a teacher serves as janitor in sweeping the room and building fires, he should be paid from the contingent fund for such services.

Mr. Vandyke, a subdirector, contracted with Mrs. L. E. Cormack as teacher for the winter term of school. The terms of the contract included that the teacher was to receive twenty-five dollars per month for teaching and one dollar and twenty-five cents a month for building the fires and sweeping the schoolhouse. The board refused to audit the full account, which would give the teacher pay for janitor's work, claiming that the said subdirector exceeded his authority in so contracting. Mrs. Cormack appealed to the county superintendent, who reversed the action of the board. W. C. Potter, president of the board, appeals.

This case has evidently for its object the securing of money on contract, and

as section 1836 prevents county and state superintendents from rendering a judgment for money, it has been the common custom to refuse to entertain any appeal in which a contract is to be decided by such appeal; for this reason the county superintendent should have dismissed the case for want of jurisdiction.

It may not be out of place here to state that unless a contract with the teacher provides that building fires and sweeping the house is included, the board can not require such service of the teacher. The payment for such services should come from the contingent fund and should be specifically mentioned. The teachers' fund is not to be used for paying for janitorial services.

Without deciding any question at issue, we are of the opinion that the subdirector did not exceed his authority given him by section 1753 when he agreed to pay a reasonable sum for janitorial services besides the twenty-five dollars paid under instruction from the board for teachers' services. But since we do not consider the case within our jurisdiction, the decision of the county superintendent is reversed and the case DISMISSED.

*

March 1, 1879.

C. W. VON COELLN,
Superintendent of Public Instruction.

W. F. RANKIN v. DISTRICT TOWNSHIP OF LODOMILLO.

Appeal from Clayton County.

RECORDS. The record of the secretary shall be considered as evidence, and can. not be invalidated by parol evidence unless there is proof of fraud or falsehood.

TERRITORY. Where territory is to be transferred by concurrent action of two boards to the district to which it geographically belongs, a majority of the members-elect is not necessary, as required for the change of subdistrict boundaries.

APPEAL. The action of two boards upon a subject over which they have divided control constitutes a concurrent action, and appeal may be taken only from the order of the board taking action last.

This appeal relates to the transfer of territory in the civil township of Cass, which has belonged to the district township of Lodomillo since 1856, to the township to which it geographically belongs.

The board of the district township of Cass appointed a committee to meet a committee chosen by the Lodomillo board, to agree upon terms of transfer. The district township of Lodomillo also appointed a committee. The joint committee agreed upon a report, which the board of Cass adopted September 16, 1878. On the twelfth day of October, 1878, the Lodomillo board, by a vote of four to six members present of a board of ten, also adopted the report and accepted the proposition agreed to by the board of Cass.

From the action of the Lodomillo board W. F. Rankin appealed to the county superintendent, who dismissed the case for want of jurisdiction, and stated that the action of the board was plainly in violation of the law, since section 1738 requires a majority of the board to change the boundaries of subdistricts. From this decision W. F. Rankin appeals.

The secretary's transcript of the transactions of the meeting of the board of Lodomillo, held October 12, 1878, does not show any irregularity in the transac-

*Note—We have since learned that the teacher recovered in a suit in the courts at law.

tion, does not show the number of members present nor the number of votes cast by which the motion was carried.

According to a well established principle of law, the records of any public or private corporation must be considered regular, and can not be set aside by parol evidence, except under an allegation of fraud. Based upon the evidence of the transcript, the whole transaction was carried on in conformity with law, and we can see no reason to interfere with the action of the board. If we admitted the testimony of M. E. Axtel, showing that only six members of a board of ten were present, and that four of these six voted for the transfer, we would still hold that said transfer was legally made. The action of the board was not a change of boundaries of subdistricts, but a transfer under section 1798. The territory transferred, being part of the districts organized before the law of 1858 took effect, could be transferred by concurrent action of the boards to the district to which it geographically belongs, and the limitation of section 1738, requiring a majority of the board to change subdistrict boundaries, is not applicable to this case.

The appeal is brought from the action of the board which concurred, and is therefore taken in a proper manner. For the reasons set forth, the action of the board is sustained and the decision of the superintendent is REVERSED.

C. W. VON COELLN,

May 28, 1879. *Superintendent of Public Instruction.*

L. B. COLBURN *et al* v. DISTRICT TOWNSHIP OF SILVER LAKE.

Appeal from Palo Alto County.

EVIDENCE. To establish malice or prejudice on the part of the board, positive testimony must be introduced, and the evidence must be conclusive.

COUNTY SUPERINTENDENT. A county superintendent should not ask the state superintendent to decide a case on appeal for him, but may ask for an interpretation of law, either by the state superintendent, or through him, by the attorney-general.

On the twenty-fifth day of August, 1879, the board fixed the location of a school house on the old site. From this order L. B. Colburn and others appealed to the county superintendent, who affirmed the action of the board, and from this decision the same parties appeal.

Among the errors enumerated, the appellants urge that the county superintendent erred in holding that the board was not actuated by passion or prejudice. We fail to find any evidence establishing the existence of such malice or prejudice on the part of the board. Appellants also claim that the county superintendent erred in basing his decision on the verbal opinion of the state superintendent, given prior to the hearing of the case.

This affords an opportunity of censuring a practice quite common among county superintendents to ask the superintendent of public instruction for his opinion in an appeal which is pending. We have made it a universal practice to refuse answers upon the questions involved in the particular case, and have given only general principles which should govern county superintendents in determining cases of appeal. These general principles are so well established that an intelligent county superintendent ought to be familiar with them.

We advised the county superintendent in this case not to measure the respec-

tive distances of the different locations from the geographical center, before the trial of the appeal.

It is proper for the county superintendent to ascertain the interpretation of points of law, by securing an opinion from this department, or from the attorney-general through this department.

Without fully determining the merits of the respective locations, we must hold that the board did not abuse its discretion sufficiently to warrant interference. The appellants failing to prove malice or prejudice on the part of the board, its order should stand, and the decision of the county superintendent affirming its action is

AFFIRMED.

C. W. VON COELLN,

March 30, 1880. *Superintendent of Public Instruction.*

APPLETON PARK v. INDEPENDENT DISTRICT OF PLEASANT GROVE.

Appeal from Des Moines County.

RECORDS. The official record is its own best evidence. Testimony intended to contradict the record should not be admitted.

RECORDS. Records not made and certified to by the proper officers as required by law are defective and may be impeached by collateral evidence.

TEACHER. The law provides that a teacher shall have a fair and impartial trial, with sufficient notice to enable him to rebut the charges of his accusers.

CHARGES. Must be clearly sustained by the evidence.

Appleton Park was duly engaged and contracted with. He began teaching on the fourth day of September, 1882; after some ten or eleven days had expired, during which time he had taught the school, he was waited upon by the entire board, called to the door and informed that certain rumors were being circulated, to the effect that he had been guilty of using obscene and vulgar language in the presence of his pupils, and during regular school hours. The board called at the schoolhouse again about the hour for closing the school in the afternoon, and the school having been dismissed, it proceeded to examine three of the boys as to the truth of the charges above referred to. The result of this action was that the teacher left the school and the board employed another teacher. Mr. Park appealed to the county superintendent, who reversed the action of the board, whereupon D. L. Portlock, president of the board, appeals.

The principal difficulty presented in this case seems to be to determine just what that action or order of the board was from which the appeal was taken. The transcript filed by the secretary of the board, is as follows: "Complaint being made by some of the scholars to the school board, in regard to the teacher, Appleton Park, using indecent, rough and insulting language during school time, the board met at the schoolhouse to make an investigation. The board stated the above charges to the teacher. Appleton Park, who after reflecting upon the matter, proposed his resignation to the board. The board, after due consideration, accepted the same. The question being settled in the above way, and no other business before the board, the board then adjourned."

The parol evidence of Appleton Park was admitted to offset and impeach

the record. This was clearly in violation of well established law, if the record was really what it purported to be, a true and authenticated copy of the proceedings of the meeting of the board referred to.

Starkie on Evidence says: "Where written instruments are appointed, either by the immediate authority of law, or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy, to exclude any inferior evidence from being used, either as a substitute for such instruments, or to contradict or alter them; of principle, because such instruments are in their own nature and origin entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV. p. 995, Vol. III, 3d Amer. Ed.

The fact that the transcript referred to is not certified to by the secretary, and the further fact that he was not present at the board meeting in question, and wrote the minutes as dictated from memory by the president of the board, three days after the meeting, fully justified the superintendent in ruling it out and in admitting parol evidence.

We come now to consider whether the trial before the board was such a proceeding as is required by section 1734. The board called in the morning and informed the teacher of the charges preferred against him, whereupon he offered to resign. It instructed him to proceed with his school and stated that it would return in the evening. During the day the board worked up its case against the teacher, while he was so employed as to prevent him from giving thought or attention to the charges, or to the preparation of any adequate defense.

We must sustain the superintendent in finding that the trial and opportunity to defend was not what the law intends every teacher shall have. Every teacher is entitled to the sympathy and support of the school board, and where there is any reasonable doubt as to the truth of stories circulated by school children, the teacher should have the benefit of such doubt. We believe that had the board been in sympathy with the teacher in this instance, it would have decided that the charges were not sustained by the evidence, at least by any evidence which appears of record. That the teacher offered to resign in the evening does not appear from the evidence offered in behalf of the board, while it does appear that at least one member of the board told him "he had better quit."

We are compelled to hold that the teacher was dismissed, and that in doing so for no sufficient reason the board erred and the decision of the county superintendent is therefore AFFIRMED.

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J. W. AKERS,

February 16, 1883. *Superintendent of Public Instruction.*

*Note.—Our supreme court rendered a decision regarding the measure of damages resulting from the wrongful discharge of this teacher. The opinion is found in 65 Iowa, 209.

J. B. B. BAKER v. INDEPENDENT DISTRICT OF WAUKON.

Appeal from Allamakee County.

RULES AND REGULATIONS. In establishing and enforcing regulations for the government of scholars the board has a large discretion.

On the seventh day of June, 1886, Maud Baker was suspended for repeated violation of a rule of the board, known as rule five, which reads as follows: "Any scholar who shall be absent five half-days in four consecutive weeks, without any excuse from parent or guardian satisfactory to the teacher that the absence was caused by said pupil's sickness, or by sickness in the family, or in the primary grades, by severity of the weather, shall forthwith be suspended. No pupil so suspended shall be reinstated without a permit from the principal."

Rule twelve provides that the principal of the school may suspend pupils temporarily, and that he shall immediately notify the parent or guardian of a suspended child of such suspension, the notice to be in writing, and furthermore, that he shall immediately inform the board of his action.

Maud Baker was absent without excuse, and when called to account for her absence stated that she had gone on a fishing excursion, and expected to go the week following. Having failed to render a satisfactory excuse, she was suspended, as above stated. Notice in writing was sent to parent, as required by rule five, and the board informed of the suspension. The board approved the action of the principal. J. B. B. Baker appealed to the county superintendent, who reversed the action of the board. D. W. Reed appeals.

The facts in this case are not controverted. It appears in evidence that the suspension of Maud Baker was reported to the board, and that a special meeting of the board was held for the consideration of the act of the principal. Maud Baker was present at this meeting of the board, and the president testifies that he read to her the rule under which she had been suspended, and asked her to give the board some promise of amendment in the future, as a condition of reinstatement and she replied that she would not make any promise for the future, and expected to go fishing the following week.

The county superintendent finds that the suspension was made in compliance with the rules of the board for the government and regulation of the schools, and that the act of the principal in suspending, and of the board in approving his action, was without prejudice or malice. The board was reversed on the ground that the law does not confer upon the principal, or the board, power to suspend for the cause for which Maud Baker was suspended.

The case turns, therefore, upon the power of the board to establish and enforce a rule providing for the suspension of pupils, who are absent a given number of days, or half-days, without a satisfactory excuse. The point has been fully discussed and settled by our supreme court in the case of *Burdick v. Babcock*, 31 Iowa, 562, and need not be considered here. *Murphy v. Independent District of Marengo* has been cited, but does not apply, as in that case

it is stated that the offense for which the pupil was dismissed was not in violation of any rule or regulation.

We are compelled to overrule the decision of the county superintendent, and to sustain the action of the board. REVERSED.

J. W. AKERS,

October 23, 1886. *Superintendent of Public Instruction.*

N. R. JOHNSTON v. DISTRICT TOWNSHIP OF UTICA.

Appeal from Chickasaw County.

MANDAMUS. To compel the performance of an official duty, appeal sometimes consumes valuable time. Mandamus is often a more speedy and better remedy.

DISCRETIONARY ACTS. Action by the board unduly delaying the final consideration of an important matter, may be regarded as an evidence of prejudice.

The issues involved in this case were the formation of a new subdistrict to be known as number twelve, and the providing for a school during the winter of 1887-8, pending the election of subdirector for the new subdistrict. The case came in due order to the county superintendent on appeal, and from his decision the board appeals.

At its meeting on the nineteenth of September, 1887, the board had before it a petition signed by Caleb Boylan and others, to redistrict number two, and to form a new subdistrict. After various motions it was voted to adjourn to the second Saturday in February, 1888, to consider said petition. Appeal was taken to the county superintendent.

At the trial before that officer, October 27, 1887, and adjourned to October 31, a motion was made to dismiss the case, on the ground that the matter was still pending before the board, as no final action had been taken by that body. The motion to dismiss was overruled, and the county superintendent proceeded to hear the case. Did the county superintendent commit an error? We think not.

Without impugning in any way the motives of the board, its action in adjourning to a date as late as the second Saturday in February, was calculated to delay and defeat the prayer of the petitioners. The aggrieved parties had an undoubted right to appeal, but we regret that they did not avail themselves of the more speedy remedy of resorting to the courts. A writ of mandamus would undoubtedly issue in such a case, compelling the board to perform its enjoined duty.

A motion to dismiss on the ground that there was no evidence to show that the board acted with passion, prejudice, or injustice, was also very properly overruled. The action of the board delaying the whole matter until the second Saturday of February, 1888, was in our opinion an act of manifest injustice, which the superintendent very properly took into account in making his decision.

The county superintendent reversed the action of the township board and ordered the new subdistrict, number twelve, to be formed, with an extra school for the winter of 1887-8, in accordance with the prayer of the petitioners. Ought his decision to be sustained?

A careful review of the evidence in the case, including the plat "exhibit

A," shows that the township of Utica is divided into eleven subdistricts, some of them very large and irregular in shape. A better division than that proposed by the formation of the new subdistrict, number twelve, can possibly be made. The county superintendent, however, provides for this, as his decision does not prevent any changing of the boundaries of subdistrict lines, if necessary to facilitate the school privileges of the township.

A new subdistrict is needed to furnish reasonable school facilities for the children in that neighborhood, and so far as ordering the new subdistrict to be known as number twelve, is concerned, the decision of the county superintendent is AFFIRMED.

HENRY SABIN,

March 15, 1888. *Superintendent of Public Instruction.*

JACOB DECK *et al* v. DISTRICT TOWNSHIP OF EDEN.

Appeal from Decatur County.

SUBDISTRICT BOUNDARIES. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction, can not again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision.

SUBDISTRICT BOUNDARIES. In changing subdistrict boundaries, both the present and the future welfare of the district township should be considered.

SUBDISTRICT BOUNDARIES. A subdistrict long established, embracing a territory having a sufficient number of scholars to maintain a good school, should not be abolished, unless the general school facilities of the township will be improved thereby.

On the nineteenth day of September, 1887, the board voted to abolish subdistrict number eight. Jacob Deck and others appealed to the county superintendent, who on the fifth day of December rendered a decision reversing the action of the township board, and the board appeals.

The counsel for the directors urged in their written argument that the county superintendent should be required to send up to this department all the testimony taken in the trial before her. It was certainly the duty of the county superintendent to send up all the testimony upon which she based her decision. In the absence of any proof to the contrary, the presumption is that the transcript furnished by her contains all the testimony on file in her office. There is no proof offered that she has not complied with the law in all respects.

On the twenty-sixth day of December, 1885, the county superintendent rendered a decision reversing the action of the board in abolishing subdistrict number eight. As no material changes have taken place since then, in the condition of the township, does that former decision act as a bar to any further proceedings in this case? We think not.

The principle enunciated here is undoubtedly correct. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction can not again be brought upon appeal, unless it can

be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision. In this case, however, the decision of the county superintendent can not act as a bar to further proceedings, because the district board did not take an appeal. Such proceedings can not be considered as final in such a sense until they have been affirmed by the superintendent of public instruction.

It is urged that the county superintendent erred in taking into consideration the distance which many of the pupils must travel in order to reach their school, if the action of the township board, abolishing subdistrict number eight, is affirmed. The law does not contemplate that one and one-half miles is in all cases an unreasonable distance. It depends largely upon the age of the pupil and upon the condition of the roads. In the case before us a natural obstacle, the Little Turkey river, must be taken into consideration. The opening of additional roads and the construction of a bridge would simplify matters somewhat, but no steps have been taken to accomplish this. Until this is done, to abolish the school in number eight would impose an undue hardship upon a large number of pupils.

What are the conditions of the school as at present constituted? The report of the secretary put in evidence, shows that the school in number eight will average with other subdistricts in the number of pupils enrolled; it is above the average in daily attendance, and below the average in cost of tuition. The board fails to show that reduced numbers render it expedient to abolish this subdistrict, nor does it show that the township is excessively taxed to support its schools.

This department has already ruled that subdistrict lines, which have been long established, embracing a territory having a sufficient number of pupils to maintain a good school, should not be disturbed, unless it can be proved that the general school facilities of the township will be improved by the change.

The board does not show that there is any general benefit to be expected from the proposed change of boundaries, nor does it prove that any existing necessity makes it desirable. The board undoubtedly intended to act fairly toward all, but we think it failed to properly consider all the circumstances involved in its action. The decision of the county superintendent is therefore AFFIRMED.

HENRY SABIN,

March 16, 1888. *Superintendent of Public Instruction.*

J. S. FOLSOM *et al* v. DISTRICT TOWNSHIP OF CENTER.

Appeal from Cedar County.

REHEARING. To warrant a rehearing, some valid reason must be urged.

TESTIMONY. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

SCHOOLHOUSE SITE. Every dwelling-house must be taken into account, as someone entitled to school advantages may hereafter reside there.

SCHOOLHOUSE SITE. When it is the evident intention of the board to relocate the site as near as possible in the center of the subdistrict, in order to furnish equal school facilities to all the residents, its action should not be materially interfered with.

The transcript in this case shows that on the twenty-first day of March, 1887, at a meeting of the board, a committee was appointed to investigate the needs of subdistrict number two and report at the meeting in September. It further shows that on the nineteenth day of September, 1887, such committee reported, recommending that the new house be built for said subdistrict, to be located in the center of the district. The report was received and the committee discharged. The report was also, upon motion, laid upon the table.

On the nineteenth day of March, 1888, at a meeting of the directors, the above report was finally adopted and a building committee was appointed to confer with the county superintendent in regard to plans and specifications. From this decision of the board Folsom *et al*, appealed to the county superintendent, and the case was heard at Tipton on the ninth day of April, 1888. The records in the county superintendent's office show that the appellee consented to the filing of an amendment to the affidavit by appellant, and that the appellee filed a motion to modify the decision of the board, and the trial then proceeded. On the eleventh day of April the county superintendent filed a decision reversing the action of the board. On the seventeenth day of April, 1888, a motion was filed for a rehearing, within the time given by the county superintendent. On the nineteenth day of April, 1888, the motion for a rehearing was argued before the county superintendent and overruled. From the decision of the county superintendent the board appealed to the superintendent of public instruction, and the whole case came up on a hearing before him on the fifth day of June, 1888.

The first question to be decided is: Did the county superintendent err in overruling the motion for a rehearing? A rehearing of such a case can be granted only when it can be shown that some injustice has been done, or some mistake has been made which can be corrected by a new trial; or when some additional evidence has been discovered which is in favor of the party applying, but which could not have been presented before by reasonable diligence. The affidavit upon which the motion for a rehearing was based failed to show any such reasons. All the main points alleged therein had already been ruled upon by the county superintendent, and we think she did not commit any error in overruling the motion. This also disposes of all the testimony sent up in support of the motion for a rehearing; these affidavits will not be taken into account in the final decision.

It is not necessary here to determine the legal residence of William Busier. His own testimony is that the distance from his residence to the site selected by the board is one and one-fourth miles. The fact that Mrs. Morgan does not desire to send to school is not material. It is not the individual but the residence that is to be considered. Some other person living at the same place may hereafter desire school privileges.

We are now free to approach the main question upon which issue is joined. The testimony shows that the directors desired to relocate the schoolhouse in subdistrict number two in a more central location; no other reason is assigned for the contemplated removal. There is nothing to show that the present site is unsuitable, except that it does not well accommodate the pupils from the northern part of the district. In this determination to relocate the site near the center, there is no evidence of any abuse of discretion on the part of the board and we think this action should not be interfered with.

There is, however, evidence which shows that the exact acre which the committee staked out is not a desirable site for a building. The board itself ac-

knowledges this in its amended order by which the site is removed ten rods north.

The county superintendent, in her decision, locates the site upon a piece of ground known as the "grave-yard site." It is urged that the county superintendent has only appellate jurisdiction, and must therefore confine her decision to the two sites upon which the parties joined issue. She seems to have entertained some such idea, as she sustained a motion to rule out all testimony in regard to the unsuitableness of the grave-yard site when such evidence was offered in the original trial. We think that such evidence should have been admitted.

In April, 1866, the Hon. O. Faville, then superintendent of public instruction, obtained this opinion from Hon. F. E. Bissell, then attorney-general: "The case does not come before him (the county superintendent) merely to correct an error of the board of directors, but to hear and decide the same matter that the board had decided. The county superintendent is not limited to an affirmance or reversal of the action of the board, but he determines the same question that the board determined." See also *John Clark v. District Township of Wayne, page* 47, School Law Decisions of 1876.

To this opinion the decisions of this department have always conformed. The county superintendent, therefore, did not go beyond her jurisdiction in selecting a site different from any which had been considered by the board.

We can not see, however, that the grave-yard site has any advantage over the old site. It is irregular in shape, and is about as far north of the center of the subdistrict as the present site is south. In fact, its selection as a site for the new building defeats the very end which the board had in view in its action locating the site in the center of the subdistrict.

The case is remanded to the board with instructions not to build upon the site selected by the committee, but to select the best site possible within a distance not more than forty rods from the center of the site staked out by the committee; the south corner of said site, however, to be at least fifteen rods north of the south corner of the committee's site; said site also to contain not less than an acre, and to be as nearly square in form as the circumstances will admit. The decision of the county superintendent is REVERSED.

HENRY SABIN,

June 7, 1888. *Superintendent of Public Instruction.*

P. O'CONNOR, JR., v. DISTRICT TOWNSHIP OF BADGER.

Appeal from Webster County.

JURISDICTION. In most matters with which boards have to do under the law, their authority and responsibility are absolute, and their jurisdiction is complete and exclusive.

JURISDICTION. A former order of the board, or a decision of the county superintendent on appeal, will not operate to prevent the board from exercising its discretion anew, when good reasons exist for such action.

REHEARING. To obtain a rehearing the necessity must be clearly shown.

DISCRETIONARY ACTS. In the exercise of discretion, the benefit of every reasonable doubt must be given in favor of the correctness of official acts.

APPEAL. The hearing is not to be conducted by a rigid adherence to the technical forms and customs which prevail in the courts.

At a special meeting of the board held February 10, 1888, it was voted to remove the schoolhouse in subdistrict number seven, forty rods north from its present site. P. O'Connor, Jr., appealed to the county superintendent, who heard the case on the twenty-third day of April and affirmed the action of the board. P. O'Connor, Jr., appeals.

The proceedings in this case are regular and the facts admitted by both parties. The only point in dispute is this: On the tenth day of November, 1887, the county superintendent heard the same case and rendered his decision reversing the action of the board. As the board did not see fit to appeal, and as no material changes have taken place in the subdistrict, it is claimed that the decision of the county superintendent rendered November 10, 1887, must be considered as final, and that no further proceedings can be had in the case. If this allegation is true, then the county superintendent committed error in not dismissing the case.

Let us examine it a moment, that we may arrive at the intent of the law. It is plain that the law reposes great confidence in the discretionary acts of a board of directors. The instructions from the department of public instruction to county superintendents have always been that such discretionary acts are to be affirmed unless it can be very clearly shown that the board has in some way abused its powers; if there is a doubt, even, the board is to have the benefit of it. It has become a well established principle that the conduct of the schools and the location of schoolhouses should be left with those officers who have the closest relation to the people for whose benefit the schools are maintained. With this principle this department is not willing to interfere.

Is it right, then, that in this present case because the county superintendent reversed the board in November, 1887, it should be left without further remedy? We think not. After its former action was reversed, the board had its choice of three courses of action; it was bound to take the one which it believed to be for the best interests of the subdistrict.

It could ask for a rehearing, but to obtain that it must be able to show that some very grave mistake had been made, or that it had discovered some additional evidence which could not have been presented before by using reasonable diligence.

It could appeal to the superintendent of public instruction, but in that event it must base its case wholly upon the evidence as presented before the county superintendent, as this department has no right to hear additional testimony.

It could begin the case *de novo*, amend its record if it was faulty, supply omissions, introduce new testimony, and perfect its proceedings in such ways as to obtain a possible different decision from the county superintendent, or so as to make a stronger case before the superintendent of public instruction if either party found it necessary to appeal to him.

In this case the board chose the last remedy, and we think it was wise in doing so, as the most ready manner of obtaining a final adjudication of the whole matter.

After careful study of the authorities cited by counsel, we can only reach this conclusion. If the aggrieved party fails to appeal within the thirty days allowed by the law, the decision of the county superintendent becomes final as far as that particular case is concerned; but we find nothing in the law to war-

rant the conclusion that a reversal by the county superintendent acts as a bar to any further proceedings because the district board did not then and there take an appeal to the superintendent of public instruction. Such a conclusion would defeat the ends aimed at by the law in placing the management of the schools in the hands of the school officers as chosen by the people. The county superintendent and the superintendent of public instruction, in hearing these appeal cases have the jurisdiction, somewhat of a court of equity and are not bound by a rigid adherence to the technical forms and customs which prevail in the courts of justice.

In reaching this conclusion we are supported by the case of *Morgan v. Wilfley et al.*, 70 Iowa, 338. "The power to redistrict and change subdistricts is conferred upon the board by the statute, and action in that direction, for sufficient cause, can not be considered as unauthorized." The power to change or fix the schoolhouse site is conferred in the same manner. Further: "The board of directors can not be so fettered by its prior action, or by legal proceedings that it may not, at any time, for sufficient cause, redistrict the township, as in its best judgment may be demanded by the interest of all the children of the district." The principle here enunciated is so broad that it applies to all the actions of the board, and it is not necessary to dwell upon it.

In regard to the merits of the case, there is nothing to be said. There is no evidence to show that the board abused its authority, and consequently no reason for setting its order aside. The decision of the superintendent is

AFFIRMED.

HENRY SABIN,

July 9, 1888. *Superintendent of Public Instruction.*

G. W. DAVIS, *et al* v. DISTRICT TOWNSHIP OF LINN.

Appeal from Linn County.

APPEAL. Will not lie to control the action of a board or of the county superintendent, where concurrence is provided for.

TUITION. To enable the districts in which the children reside to collect tuition, all the requirements of the law must first be fulfilled.

At its regular meeting on the eighteenth of March, 1889, the board passed a resolution excluding from the privileges of the school, in subdistrict number seven, children from the independent district of Laurel Hill, in Jones county, who had from time to time for many years, been allowed to attend the school in said subdistrict number seven. On the thirteenth of April the board considered a petition of parties in the adjoining district of Laurel Hill desiring to send to the school in Linn township, and passed an order refusing to admit their scholars. From this action, G. W. Davis and others appealed to the county superintendent, who heard the case on the ninth of May, affirming the order of the board. From his decision G. W. Davis appeals.

The attendance of scholars living in an adjoining district is governed by section 1793. By the portion of the section to which this appeal relates, children may attend in another district on such terms as may be agreed upon by the respective boards. In the history of this case, it is not shown that any action was taken by the board of Laurel Hill as to agreement regarding terms of attendance.

The board of the district township of Linn refused to admit the scholars in question. It is from this order, an initial action, that appeal was taken.

At the trial before the county superintendent a statement of facts was submitted and was agreed to by both parties to the appeal, as a basis upon which the appeal should be heard. At this point the board by its attorney filed a demurrer, urging that the county superintendent could not acquire jurisdiction; that the action of the board complained of was not subject to revision upon appeal and asking the county superintendent to dismiss the case for want of jurisdiction. The demurrer was overruled, the case was tried on the agreed statement of facts, and the order of the board affirmed. Did the county superintendent err in overruling the motion to dismiss the case for want of jurisdiction? We think he did.

If the boards fail to agree upon terms of attendance, certain conditions regarding distance from the respective schools being fulfilled, as they are in this case, section 1793 itself provides the next step to be taken. The county superintendent of the county in which the children reside may give his consent with that of the board of the district where the children desire to attend, admitting them. But from the refusal of the board to admit the children it is held and has been uniformly held in opinions by this department, that appeal will not lie. It has always been conceded to be the intention of the lawmakers to leave with the board of the district in which the school is maintained, the matter of determining finally and conclusively, if it chooses, that scholars shall not be admitted under the provisions of section 1793. If its consent is withheld, neither the courts of law nor any appellate tribunal may set aside its order of refusal, and compel it to admit outsiders and accept as compensation for their instruction the amounts fixed by section 1793. We have referred to this matter at such length, because the counsel for the appellant urges the claim that the case should be remanded for a new trial.

We are compelled to find that there are but two methods in law, by which attendance in subdistrict number seven may be secured for their children by the appellants. The two boards may agree as to the terms of attendance. Or after they have refused to agree the concurrent consent of the county superintendent of Jones county and the board of the district township of Linn, will entitle the children to attendance and bind their home district for the expenses of their instruction in the manner provided by section 1793. But appeal will not lie to control the action of either board or of the county superintendent.

REVERSED AND DISMISSED.

HENRY SABIN,

August 6, 1889. *Superintendent of Public Instruction.*

ISHAM WATKINS v. INDEPENDENT DISTRICT OF EMPIRE.

Appeal from Marion County.

APPEAL. An appeal will not lie from an order of the board initiating a change in boundaries, where the concurrence of the board of an adjoining district is necessary to effect the change.

APPEAL. Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.

JURISDICTION. The jurisdiction of an appellate tribunal is not greater than that of the board from whose action the appeal is taken.

On the sixteenth of September, 1889, the board of the independent district of Highland determined to notify Isham Watkins of Empire district, that his children could not any longer attend the school in Highland district. The records show that it was willing that he should be attached to Highland district. This was taken as an initiatory movement. Isham Watkins petitioned the board of the Empire district to set off the north half of northeast quarter of sections 25, 75, 21, to the independent district of Highland. The petition was rejected; in effect the Empire board refused to concur. An appeal was taken to the county superintendent, who ordered that the northeast quarter of northeast quarter of section 25 be detached from the independent district of Empire and attached to the independent district of Highland.

Of the several questions involved in this case it is necessary to discuss only one. Did the county superintendent exceed his jurisdiction? The board of Highland initiated an action. The board of Empire district must either concur or non-concur, and from its action an appeal could be taken. If it did not choose to accede to the proposition of the Highland district, then action in that particular ended with its vote to non-concur. If it had a different proposition to make, as for instance granting forty acres, it could only initiate a movement to that effect and leave it for Highland district to act, and from the action of the latter board an appeal could then be taken.

In this case the county superintendent initiates a new action, and leaves it for Highland district to act. Now, if this action is allowed to stand, anyone aggrieved may take an appeal from the action of the board of the Highland district. He would then have an appeal brought before the county superintendent from an action which he himself initiated. It might be further agreed that if the county superintendent has original jurisdiction, then this appeal can not lie, as an appeal can be taken only from the order of the board completing the action. The precedents established have been followed closely by this department and we can see no reason for breaking away from them.

It is held that in cases requiring the concurrent action of two boards, the board completing the action can only concur or non-concur. Any action involving a new proposition initiates a new case, which must be passed upon by the other board concerned in the matter, and from which an appeal can be taken. It is further held that the county superintendent upon appeals is limited to reversing or affirming the action of the board completing the action, and that he can not assume original jurisdiction and do what the board appealed from could not do.

It seems apparent that Mr. Watkins has not reasonably good school facilities, and we regret that we are compelled to set aside the decision of the county superintendent. He was actuated by laudable motives and was looking for the best interests of the children in this case. We are, however, forced to the conclusion that the county superintendent erred in assuming original jurisdiction.

REVERSED AND DISMISSED.

HENRY SABIN,

March 18, 1890. *Superintendent of Public Instruction.*

ROBERT MAXWELL v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Union County.

PROCEEDINGS. The regularity of all the proceedings will be presumed upon. This is true in an especial sense when the records are more than usually complete.

TEACHER. In the trial of a teacher the board is bound carefully to protect the interests of the district and to seek the welfare of the school, as well as to regard the rights guaranteed to the teacher.

NOTICE. Appearance at the trial is a complete waiver of notice.

RECORDS. The record of the secretary must be considered as evidence, unless there is proof of fraud or falsehood.

On the ninth day of December, 1889, the secretary, acting upon a petition signed by five residents, called a meeting of the board for December 14th, to examine the teacher of subdistrict number eight. A notice was also served upon the teacher the same date, signed by the secretary, both the call and the notice being spread upon the records in due form. The meeting was held on December 14th. The records show that the appellant was present and objected to the consideration of the charges, as the proceedings were not in accordance with section 1734. At the same time he demanded a copy of the charges and that one week be given him in which to prepare his defense, which demand was complied with and the board adjourned to December 21st.

If the appellant had moved to dismiss the case it would not have been an error to sustain the motion, but he submitted to the jurisdiction of the board and obtained a continuance of the case until December 21st. It must be held that by this action he waived any defect or irregularity in the jurisdiction of the board in this case. The purpose and object of the process, as pointed out in section 1734, was fully accomplished. See *Wilgus et al. v. Gettings et al.*, 19 Iowa, page 82. At the meeting held December 21st the board voted to discharge the teacher. An appeal was taken to the county superintendent, who affirmed the board. The appellant appeals to the superintendent of public instruction.

The only question before the county superintendent was whether the conditions as prescribed in section 1734 were fully complied with. It is alleged that while the teacher was present he was not allowed to make his defense. The secretary's transcript furnishes the only means of determining this. The records show that he was allowed to cross-examine witnesses, and they do not show that he was barred from offering evidence had he chosen to do so. There can be no question of the power of the board under the law to discharge the teacher. It is held in the case of *Kirkpatrick v. Independent District of Liberty*, 53 Iowa, 585, that the board does not act as a court, in any strict sense, and is not bound by the rules applicable to a court. The intent of the statute is evidently, while it guards carefully the rights of the teacher, to enable the board to discharge a teacher who, after a careful investigation, is determined to be unfit for the position. It is termed "a simple and inexpensive way of determining rights." It is claimed by the counsel for the appellant

that when a certain mode is prescribed in determining a case not in the usual course of the common law, such mode must be followed, and reference is made to the case of *Cooper v. Sunderland*, 3 Iowa, 114. But it is held in the same case that when sufficient evidence appears on the face of the records to give it jurisdiction under the law conferring the power, then the presumption attaches in favor of the remainder of the proceedings of the court. If the action of the appellant in appearing for trial gave the board jurisdiction, then all the proceedings must be held to be regular. The discharge of a teacher is largely within the discretionary power of the board. It is to guard the rights of the district and the interests of the school, as well as the rights of the teacher. After a full and fair investigation it is its duty to act as it deems best, under all the conditions and circumstances of the case. See *Smith v. Township of Knox*, 42 Iowa, 522. This being the case, it is the duty of the county superintendent not to interfere with the action of the board unless he is convinced that it in some way abused its discretion. He is right in sustaining the board, even though as an individual he would have preferred some other action on its part.

Our conclusion is, after a careful consideration of the matter and after reading the transcript with unusual care, that the defendant had a fair and impartial trial, and that the terms of the law were substantially complied with. The decision of the county superintendent is AFFIRMED.

HENRY SABIN,

June 12, 1890. *Superintendent of Public Instruction.*

ELISHA AND ELDA TANNER v. INDEPENDENT DISTRICT OF CLARENCE.

Appeal from Cedar County.

AFFIDAVIT. A technical error in the affidavit not prejudicial to either party will not defeat the appeal.

AFFIDAVIT. The affidavit may be amended when such action is not prejudicial to the rights of any one interested.

SCHOOL PRIVILEGES. The law is to be construed in the interest of the child. The actual residence of the scholar at the time will establish the right to attend school free of tuition.

The board excluded Elda Tanner from school until such time as her tuition is paid, on the ground that she is a non-resident pupil. The county superintendent, on appeal, reversed the action of the board and appeal was taken to the superintendent of public instruction. It was claimed before the county superintendent that inasmuch as the affidavit upon which the appeal was based was without the seal of the notary public, that there were no grounds upon which the appeal could be legally based. While it is true that the notarial seal is necessary to constitute an affidavit, in this case the notary public was present at the time of trial and under oath testified that the omission of the seal was only an oversight on his part, and that the persons therein designated did make oath to the paper and affix their signatures to it in his presence, then he also there affixed the notarial seal. It is held that since no interests were prejudiced by the error which at the best was only technical, the county superintendent did not commit an error in overruling the motion to dismiss the case.

The allegations of facts made by Elda Tanner are that she is sixteen years of age, that her father and mother have parted, and that for ten years or more she made her home in the family of Mrs. McCartney in Massilon township. Before she came to Clarence she had an understanding with her father that she was to care for herself thereafter. She also claims that being thus emancipated from her father's control, she chose to become a resident of Clarence, and as an actual resident of that school district is entitled to the privileges of school under the provisions of section 1794.

It is of interest to ascertain how far such an agreement constitutes emancipation of a minor child. It is held in 1 Iowa, 356, that in the absence of statutory requirements such emancipation need not be evidenced by any formal or record act, but may be proved like any other fact. The evidence of Elda Tanner in this case is corroborated by that of her father, and of Mrs. McCartney, who was present during the conversation. We are disposed to hold that Elda Tanner under the facts as sworn to before the county superintendent was at liberty to choose such a place of residence as seemed to her most fitting. The evident and beneficient intent of the law is that no child shall be deprived of school privileges. The father of a family may move into the district from an adjoining State, and although certain time must elapse before he is entitled to vote he may place his children in school the very day he arrives. In the same spirit it has been held that children living in families in which their work compensates for their board, are actual residents and are entitled to school privileges. The law is to be construed in their interests. The district is entitled to have such children enumerated, if they are thus actual residents at the time the school census is taken. We do not undertake to decide that parents or guardians can transfer children from one district to another for school purposes alone, but only that those who are actual residents under the provisions of the law may attend school without the payment of tuition. While it is true in general that the residence of a child is the same as that of the parents or guardian, the law evidently contemplates exceptions to this general rule and leaves the right to attend school to be established by the actual residence of the child. Any other construction would not be in accordance with the spirit of the law, and would deprive many children of the right to attend the public schools.

In this case the question of residence is largely one of intent. The testimony of Elda Tanner is to the effect that she was at the time of attendance an actual resident of Clarence, and had no other residence. It was competent for the board to disprove this, but we do not find the evidence to that effect conclusive.

It is held that the board erred in excluding Elda Tanner from school and the decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

April 24, 1891. *Superintendent of Public Instruction.*

J. C. REED *et al.* v. DISTRICT TOWNSHIP OF EAGLE.

Appeal from Sioux County.

SUBDISTRICTS. The board should be encouraged in forecasting a general plan looking toward an ultimate regularity in the form of subdistricts.

SCHOOLHOUSE. There is no limitation in law as to the number of scholars to be accommodated, in order that the board may provide a schoolhouse.

SUBDISTRICTS. Should be, if possible, compact and regular in form. In well populated district townships two miles square is considered a desirable area for each subdistrict.

SUBDISTRICTS. It is very important that subdistricts should be regular in form, and that where it is possible schoolhouses should be located at or near geographical centers.

BOUNDARIES. In the determination of district and subdistrict boundaries, temporary expenditures and individual convenience should be subordinated to the more important considerations relating to simplicity of outline, compactness of shape, uniformity of size, and permanence of sites and boundaries.

The above named district township coincides with a congressional township and consists of a single subdistrict. Portions of the district are yet sparsely settled. The board seems to have projected a plan to so locate schoolhouses when they must be supplied, that ultimately the township shall have nine subdistricts, each of four sections.

On the sixteenth of March the board ordered a schoolhouse built at the center of the square of four sections in the southeastern corner of the township. From this action J. C. Reed appealed to the county superintendent, who affirmed the order of the board. From this decision Mr. Reed appeals.

It was urged before the county superintendent that the board was prevented by the law from building a schoolhouse for the accommodation of a less number than fifteen of school age. The question now to be determined is whether the county superintendent erred in affirming the order of the board.

The board seemed to have outlined a policy of regarding each four sections as a separate division, to be provided with school advantages by itself. So far as forecasting the probable form of subdistricts to be created in the future, we think the board might be guided in the location of schoolhouses at the present time by such policy, in order that ultimately each subdistrict will have the form desired and each schoolhouse will be located so as best to accommodate all patrons.

But while matters are in this progressive condition, we think the law does not confer power upon the board to apply the limitations of section 1725, and decide that until fifteen of school age are to be accommodated by the schoolhouse to be built no house can be erected. In this case for instance there is but one single subdistrict. The board may create other subdistricts provided fifteen of school age are included within the boundaries of each one so formed. But the board is not prevented from building more than one schoolhouse in any subdistrict. See 69 Iowa, 533. In the absence of specific instructions in connection with the voting of the taxes by the electors, the board is empowered to locate sites where in its judgment, a schoolhouse seems to be most demanded.

We are unable to find from the evidence any reason to disturb the finding of the county superintendent and his decision is therefore AFFIRMED.

HENRY SABIN,

July 3, 1891. *Superintendent of Public Instruction.*

E. A. SHEAFE v. INDEPENDENT DISTRICT OF CENTER.

Appeal from Wapello County.

TEACHER. As an employe of the district the teacher may justly claim and expect to receive the official assistance and advice of the board.

TEACHER. The law insures the teacher a fair and impartial trial before he may be discharged.

The history of this case presents nothing unusual. The board voted to discharge the teacher upon certain preferred charges. The teacher appealed to the superintendent, who reversed the action of the board. The board appeals.

Section 1757 sets forth plainly the nature of the contract which is the evidence of agreement between the board acting for the district as one party, and the teacher as the other party. Section 1734 prescribes the only method by which the board may terminate the contract in advance or discharge the teacher. Both parties are equally bound by this contract, and as the board is a continuous body, the election of an entire new board does not change the relations of the contracting parties. But inasmuch as the directors also act as judges whose duty it is to decide whether the contract shall be terminated, being themselves parties to the contract, it becomes them to weigh the evidence in the case with the greatest care and to give the teacher the benefit of any reasonable doubt. In the present case the forms of the law were complied with, and the teacher was permitted to be present and make his defense.

The transcript sent up by the county superintendent shows that one of the complaints upon which the teacher was tried was signed by Jacob Ream, who also is one of the directors and acted as one of the judges in the case. This is strong presumptive evidence of prejudice on the part of one of the judges at least, and this evidence is strengthened by the fact that Jacob Ream is the father of John Ream, whose punishment is made a matter of complaint. It is further strengthened by the fact brought out in evidence, that the present board was elected for the purpose and with the intent of displacing the teacher. The law is very careful to guard the rights of the teacher and to insure him a fair trial. That certainly can not be considered a fair trial in the eyes of the law, in which one of the judges who is to give his vote for acquittal or conviction is a complainant in the case and is as ready to pronounce the verdict before he hears the testimony as afterward.

The board invited the teacher to resign at its first meeting, and upon his refusal it proceeded at once to take steps to discharge him. Under certain circumstances this might be right, when necessary to relieve the school from a teacher proved to be incompetent or immoral. But general dissatisfaction as alleged in the petition or the desire to hire a lady teacher for the summer term, or to lessen the expenses of the district, can not be held to form any reason for discharging the teacher. The alleged punishment of the two boys is not proved in either case to have been unreasonably severe, to have been inflicted in passion, or to have resulted in any permanent injury. These punishments happened some weeks before and any complaint should have been made to the old board.

It does not appear necessary to enter any further into the merits of this

case. It is held that no error was committed in reversing the action of the board and the decision of the county superintendent is therefore

AFFIRMED.

HENRY SABIN,

October 20, 1891. *Superintendent of Public Instruction.*

C. A. WEBSTER v. INDEPENDENT DISTRICT NUMBER SEVEN.

Appeal from Winneshiek County.

DISCRETIONARY ACTS. To warrant interference with a discretionary act, abuse of discretion must be proved beyond a reasonable doubt.

DISCRETIONARY ACTS. It is not the province of an appeal to discover and to correct a slight mistake. The board alone must bear any blame that may attach to a choice deemed by appellants somewhat undesirable, but not an unwise selection to such a degree as to indicate an abuse of the discretion ordinarily exercised.

DISCRETIONARY ACTS. In the absence of proof that the board has abused the authority given it by the law, its orders will not be set aside, although another decision might to many seem preferable.

JURISDICTION. When its order is affirmed, the board is left free to take another action, if thought best.

On the third day of October, 1891, the board relocated the schoolhouse site in independent district number seven, Burr Oak township. Appeal was taken to the county superintendent, who reversed the action of the board which ordered the house removed to the new location. From this decision John Knox, president of the board, appeals.

The proceedings in this case are entirely regular. It is not claimed that there was any direct violation of law, nor that prejudice or improper motives in the least influenced the action of the board. The very common complaint that the discretion vested in the board by the law had been abused was virtually the only error urged.

The only question for us to determine is the single one as to whether the county superintendent was warranted in setting aside the order of the board. Unless the evidence clearly sustains his conclusions we shall be compelled to reverse this decision. But if the evidence shows plainly a gross abuse of discretion on the part of the board, then we must affirm.

Where an abuse of the large discretion vested in the board is urged, to warrant interference by an appellate tribunal, such abuse must be proved conclusively. The testimony must disclose so fully the nature of the unwarranted action as to leave no reasonable doubt. The acts of a board must be presumed to be correct, and they are entitled to the benefit of every doubt. Unless it is fully apparent that the discretionary power of the board has been abused to such an extent as to render interference necessary, it is the duty of the county superintendent to allow the act of the board to stand, although he may differ from the board very strongly as to the desirability of the order in question. In this connection, attention is called to appeal decisions found on pages 35, 82, 90, 100 and 135, School Law Decisions of 1888.

In this case while the testimony shows that the removal of the site se-

lected will bring the schoolhouse quite a distance south of the center of the district, it is not in evidence that a suitable site might have been found nearer the center. It must be presumed that the board carefully weighed all the reasons in favor of and against the site chosen, and also that it endeavored to find the best site. The evidence is by no means conclusive that it did not select the best site obtainable. If in the opinion of the people an error has been made, it rests with the electors to choose a board favoring another location.

It is with reluctance that we reverse the decision of the county superintendent. There can be no question that he intended to seek substantial justice for the people of the district. This decision does not prevent the board, if thought desirable to do so, from reconsidering the action by which the new site was chosen and selecting a different site. But we can not find that the evidence supports the county superintendent in overruling the order made by the board and his decision is therefore REVERSED.

J. B. KNOEPFLER,

February 26, 1892. *Superintendent of Public Instruction.*

R. G. W. FORSYTHE v. INDEPENDENT DISTRICT OF KIRKVILLE.

Appeal from Wapello County.

APPEAL. Where the changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.

TERRITORY. All territory must be contiguous to the district to which it belongs.
JURISDICTION. In change of boundaries by two boards, an appellate tribunal acquires only the same power possessed by the board from whose action appeal is taken, and may do no more than affirm the order, or to reverse and do what the board refused to do.

PETITION. A petition may be used to bring to the attention of the board the kind of action desired by the petitioners, but a board may act with equal directness without such request.

The board of the above named district refused to concur in the action of the board of the district township of Richland, offering to transfer certain territory to the independent district. Mr. Forsythe, desiring the transfer, appealed to the county superintendent, who reversed the action of the board and ordered the transfer of the territory under consideration by the two boards, with the exception of the northwest quarter of the southwest quarter of section eighteen, which the county superintendent directed should remain a part of the district township of Richland, and also ordered the transfer of the northwest quarter of section eighteen, which would otherwise be cut off from the district township to which it belongs. From this decision L. Jones, president of the board of the independent district of Kirkville, appeals.

This case turns on the power of the county superintendent to modify the order appealed from in the manner done by him. It is true that even if the board of the independent district of Kirkville had concurred in the transfer

of the territory released by the other board, such order would not have been in conformity with the spirit of the law, because forty acres would then be left belonging to the district township of Richland and not contiguous to the remainder of the district. The county superintendent was led to conclude that the forty acres in question should be transferred, if any change of boundaries was made. But could the county superintendent so determine in this appeal? We think not. The board of the independent district might concur or refuse to concur. They might refuse to concur, and initiate a new proposition which the board of the district township could act upon, when appeal would then lie from the last action. But an attempt to change the order originally made would render it necessary to have such new action considered by the other board, before becoming effective, or even in order that the action could be brought within the power of the county superintendent to consider on appeal. For in a case of this kind no matter can come into the case on appeal, unless the second board, the one last acting, concurs or refuses to concur in the order initiated or proposed by the board first taking action.

It follows then that the county superintendent having only appellate jurisdiction, could not assume original jurisdiction and do what the board from whose action the appeal was taken could not have done. Therefore we are compelled to hold that the county superintendent did not have the power to decide that the northwest quarter of the northwest quarter of section eighteen should be transferred.

A careful investigation of the transcript leads us to believe that perhaps such a change of the boundaries as would transfer the residence of Mr. Forsythe to the independent district, might be desirable. Of course such transfer would include entire forties of land, and no territory could be separated from the district to which it should belong. Whether any change is best, must be determined by the boards interested, the action of the board last acting being subject to correction on appeal. In order that the matter may come again without prejudice to the attention of the boards, the decision of the county superintendent is reversed and the case remanded to him to be reopened and heard again. We think he will be compelled by necessity to affirm the decision of the board of the independent district of Kirkville, in refusing to concur in the transfer proposed by the district township. This will leave all matters as nearly as possible in the same condition they were before any action was taken. It will then be in order for either board at any time to initiate such a change of boundaries as may seem demanded. There is no absolute necessity for a petition or request. A petition may be used to bring to the attention of the board the kind of action desired by the petitioners, but a board may act with equal directness without such request. REVERSED AND REMANDED.

J. B. KNOEPFLER,

April 6, 1892. *Superintendent of Public Instruction.*

OLE THOMPSON *et al* v. DISTRICT TOWNSHIP OF BELMOND.

Appeal from Wright County.

TESTIMONY. Opinions unsupported by facts do not become satisfactory evidence.

DISCRETIONARY ACTS. The order complained of is reviewed not to discover the desirability of the action, but to determine whether sound reason and wise discretion were followed.

DISCRETIONARY ACTS. The fact that some other action would have been desirable or preferable does not establish that the board abused its discretion.

BOARD OF DIRECTORS. Its action is presumed to be correct and for the interest of the district, until proved to be otherwise.

DISCRETIONARY ACTS. In the determination of appeals, the weight which properly attached to the discretionary actions of a tribunal vested with original jurisdiction should not be overlooked.

This case comes before the superintendent of public instruction on appeal taken by John L. McAlpine from the decision of the county superintendent reversing the action of the board in refusing to create certain additional subdistricts as prayed for in a petition.

The point at issue is a simple one, being merely a question of discretion on the part of the board as to whether it was best to take or not to take a certain action. The decision of the county superintendent compels the board to do what it did not deem wise or necessary. Doubtless there are instances when such a ruling on the part of the appellant tribunal is needed. But does the evidence warrant such a decision in the present case? The affidavit bringing the case before the county superintendent does not allege violation of law, or prejudice. Neither does such appear in the testimony. The law gives boards very wide latitude in the exercise of their discretionary powers. Not infrequently cases arise in which an appellate tribunal would sustain their discretionary action whether they granted or refused to grant a given petition, there being no manifest abuse of such discretion in either action. In any event, the action of a board is presumed to be correct and for the interest of the district until proved to be otherwise. Mere opinions of witnesses that a different action would have been preferable can not be accepted as evidence. Statements of facts and existing conditions must be given. Even then the fact that some other action would have been desirable or preferable does not establish that the board abused its discretion. It must be shown that the action complained of is an injury to the district or does gross and needless injustice to the patrons thereof. The decisions in this line by our predecessors are numerous and pointed, and we fully concur in the position taken.

In the present case the evidence does not show that any one is made to suffer injustice by the board's action. Ample provision has been made to accommodate all of the pupils of the territory in question with school privileges. It is not in evidence that the formation of three subdistricts out of the one would improve these facilities, since the subdistrict now has three schoolhouses located for the convenience of the respective portions of said subdistrict.

For the county superintendent, or the state superintendent, to render a de-

cision invariably as he would have voted had he been a member of the board, is not what the law intends when clothing these officers with authority to try and decide appeals. Malice, prejudice, violation of law, is the board guilty of any of these? Or has it gone beyond sound reason and wise discretion in taking or refusing to take a given action? These are the questions for both tribunals to inquire into.

While we believe the county superintendent endeavored conscientiously to hear and decide the present case fairly, yet in the light of the foregoing reasoning we do not find that the evidence discloses grounds sufficient for refusing to affirm the board, and the decision of the superintendent is therefore

REVERSED.

J. B. KNOEPFLER,

March 11, 1893. *Superintendent of Public Instruction.*

J. O. SEVEREID AND JOHN STENBERG v. INDEPENDENT DISTRICT OF FIELDBERG.

Appeal from Story County.

SCHOOL PRIVILEGES. Are not guaranteed children elsewhere than in the district of their residence.

SCHOOL PRIVILEGES. To the fullest extent possible, the board should equalize the distance to be traveled to school.

SCHOOL PRIVILEGES. Attendance in another district depends upon the board of that district, and must therefore be regarded as a contingency.

The transcript in this case shows that on March 20, 1893, the board in answer to a petition relocated the school site and made an order to move the schoolhouse on the site selected, the latter being more than three-fourths of a mile north of the present site. John O. Severeid and John Stenberg appealed to the county superintendent, who affirmed the order of the board. The same parties now appeal to the superintendent of public instruction. The essence of affidavit filed by appellants is abuse of discretion by the board because several families will be compelled to go two miles or more to reach the schoolhouse on the new site.

The district consists of four sections in the southwest corner of Palestine township. The schoolhouse as now located is in the geographical center of the district and within a distance of one and three-fourths miles from the most remote patrons. In the northern part of the district, in fact, on the extreme northern boundary, lies the village of Huxley. It is in the edge of this village, and therefore almost in the limits of the district, that the new site has been selected. Two of the directors residing in said village and being the two who voted for the new location. The district has a school enumerating sixty-eight of whom about forty live in Huxley. These pupils have been going to the center of the district, where the schoolhouse now is, a fraction over one and one-fourth miles. For the better accommodation of these pupils the removal was ordered. While some attempt is made to show that the site chosen is unfit, that the cost of moving will be excessive, and that there was undue prejudice, we do not find that any of these charges are sustained. We may therefore consider merely the element of distance to the new site. It is in evidence that some of the school patrons will have to travel two and one-fourth miles to reach

the new site, while there are five families with nine children whose distance will be over two miles, also that about twenty-nine children at present will be unfavorably affected and about thirty-seven favorably. While the new site will accommodate a majority of the pupils, still it is considerably north of the center of population. The board and the petitioners seemed to realize clearly that the contemplated site would leave several families at a great disadvantage as to school privileges, since they state that these families can be accommodated in other districts. They realized that an injustice would be done if these families should be compelled to travel to the new site for school conveniences. But there is nothing offered in evidence to show how said patrons can be accommodated elsewhere. It is not shown that they will be as near even another school as to their own, provided they might attend such a school. For aught that appears in the evidence, they may be three or more miles from any other school. Even if there be one nearer, there is no positive evidence that the board has made arrangements for the schooling of said pupils in another school, or even that it can make such arrangements. Witnesses say that they think said pupils could attend in some other district, but this belief merely can not be received as satisfactory evidence on this point. What are the probabilities that such provisions can be made for the children of the five families under consideration? The territory on which these families reside can not be set off to another district for the reason that territory can not be detached to districts in a different township, as would be necessary in this case. Neither is it legal to reduce independent districts to less than four sections except in special cases. See chapter 133, laws of 1878, as amended by chapter 131, laws of 1880, page 84, S. L. 1892.

The board is not sure of securing school privileges for said pupils elsewhere without such transfer of territory, because it will require the concurrence of another board which may absolutely refuse. In any event the board of Fieldberg independent district is not able to guarantee school privileges to these families elsewhere than in their own district, since the matter does not rest wholly in its own power. While the law does not, as many suppose, prescribe a maximum distance for school travel, yet by permitting provisions to be made under given conditions for children to attend other schools than their own when they live more than one and one-half miles from the latter, it is evident that the legislature regarded this distance about as far as a child should travel to reach school.

It is the duty of the board to furnish reasonable facilities in its own district for all the children thereof. Even a minority of only five families has rights and claims which may not be ignored. To give a majority of the district located in a village convenient school privileges by practically cutting off others entirely from any privileges of education, we believe after long and careful study to be an abuse of discretion sufficient to warrant reversing a board taking such action. The distance these families will be compelled to travel to school will be such as largely to deprive them of their just rights in the matter of enjoying school accommodations.

We are aware that this department has ever stood for sustaining the discretionary acts of a board. In this case, however, we believe that abuse of discretion has been fairly proven by the appellants. Doubtless the board had not fully considered the fact that rights of appellants could not be so ignored in the effort to improve the school conveniences of other parts of the district,

or did not consider that providing school privileges for appellants in some other district is hedged about with such complications and uncertainties. The case is different from what it would be had theirs been a district township instead of an independent district. In the former case the matter would be much more in its own hands. It could rearrange boundaries to accommodate those at too great a distance from the new site, a matter which the board in the present case can not do. If it was satisfactorily established that said families had been or could and would be permanently provided with better school facilities elsewhere, such accommodations being annually dependent upon conditions in the district in which they might desire to attend, especially in the disposition of each new board, it would have been a comparatively clear case for affirming the action of both board and county superintendent. Because the distance of five families is to our mind needlessly increased and their school privileges nearly cut off, and because there is no proof that another school is nearer, with provision that they could attend such school, if there is one, and it seeming quite doubtful whether such provision can be made at all, we feel that the interests of said families should be protected. We have no reason to question the intentions of any parties connected herewith. We simply state that in our opinion the board did not consider the difficulties in the matter of providing school facilities for the five most distant families.

The decision of the superintendent is REVERSED.

J. B. KNOEPFLER,

August 14, 1893. *Superintendent of Public Instruction.*

BRADFORD INGRAHAM V. DISTRICT TOWNSHIP OF HARTFORD.

Appeal from Iowa County.

SCHOOLHOUSE SITE. It is not the province of an appeal to determine which of two sites is the better.

TESTIMONY. If selfish or other improper motives are complained of, the testimony must show such facts conclusively.

The history of this case is brief. March 20, 1893, the new township board having then just organized, on motion appointed a committee of three to relocate the site of schoolhouse in subdistrict number eight, said site to be near the geographical center of said subdistrict. On the twentieth of May, at a special called meeting, it was moved to reconsider the motion to relocate the schoolhouse in subdistrict number eight, which motion was carried. By another motion the committee appointed at the former meeting was discharged. It is from this action of the board on May 20th that Bradford Ingraham appealed to the county superintendent, and from the latter's decision affirming the action of the board to the superintendent of public instruction.

In his affidavit, Mr. Ingraham alleges that the board was influenced by selfish motives and further alleges in effect that the board abused its discretionary powers. The abuse of discretion, if such it is, consisted in the unequal distance of travel from the different parts of the subdistrict to the schoolhouse. A careful reading of the case as filed in the transcript fails to disclose any selfish or improper motives on the part of the board, and we dismiss this charge without further comment.

Counsel for appellant discusses at some length the effect of a vote to recon-

sider, and then not reconsidering, not voting on the former motion. It is claimed that the board merely voted to reconsider former motion to relocate, and that no further action being then taken, the motion to relocate remained before the board until it should be acted upon one way or the other, or that not being taken up within a month, it was terminated, leaving the previous action thereon in force. Counsel for appellees claims if the first be true, then the case should have been dismissed, as no action had been taken from which to appeal.

Technically the vote to reconsider the former motion placed said motion before the board again, as if it had not been voted on, and left it ready for debate and adoption or rejection. But it is clear that the board intended to rescind its former action and evidently understood the word reconsider in the sense of rescinding. It is quite a common misapplication of the word. That this was the intention is the more conclusive when we note the subsequent vote of the board in discharging its committee.

In providing for appeals before the county and state superintendent, it was the manifest purpose of the lawmakers to afford a speedy, inexpensive remedy, stripped of undue technicalities, for certain classes of grievance. Holding this view, we must recognize the intent of the board, rather than what it did under a technical construction of language. Apparently the board itself made the relocation, and appointed a committee chiefly to arrange the details and see to the removal of the schoolhouse. At the May meeting no action was taken by the board on the report or statement made by the committee. The resolution of the board at the March meeting located the site about eighty rods east of the old site. The rescinding of this amounted to a new location or to undoing the former action, a thing they clearly had a right to do. Members of the board had changed their views.

No evidence is introduced to show that either site is in itself unsuitable. It is merely a question of distance. It is a question of moving the schoolhouse away from some and nearer to others. Neither site would seriously discommode any one according to the plat sent up with the transcript. It is in evidence that only one more pupil would be better accommodated at the new site than at the old. It is not the province of this department, nor of the county superintendent, to determine which of the two sites is the better. An appellate tribunal in such cases may determine only whether the board has chosen a grossly unsuitable or unjust and unfair site. If so, the board should be reversed. If not, it should be sustained, even though a better site could be found.

In the present instance no gross injustice is done, no manifest error committed. In fact, both sites are good, and we should be compelled to sustain the board on appeal in the selection of either the present or new site. We hold that the county superintendent committed no error in affirming the action of the board when it practically rescinded its former motion for relocation and chose to keep the old site. His decision is therefore AFFIRMED.

J. B. KNOEPFLER,

December 21, 1893. *Superintendent of Public Instruction.*

W. S. KENWORTHY *et al.* v. INDEPENDENT DISTRICT OF OSKALOOSA.

Appeal from Mahaska County.

DISCRETIONARY ACTS. The order of a board should be reversed only upon the plain showing that the law has been violated or discretion grossly abused.

BOARD OF DIRECTORS. Has full power to provide and enforce a course of study.

RULES AND REGULATIONS. The burden of proof is with the appellant to show that a rule is unreasonable.

The history of the case is this. The board has a regulation that all pupils shall provide themselves with text-books suitable to their grade, and that failing to do this they shall be suspended until they comply with the rule.

The children of the appellants were under this rule suspended from school for not being provided with the music books in use in said schools. The parents appealed from the ruling of the board to the county superintendent, who reversed the action of the board, and the board appeals.

It is an established rule that the action of a school board should be reversed only upon the showing that it has abused its discretion or violated the law. In this case the county superintendent avers that it violated the law in that it did not advertise for bids as required by section 5 of chapter 24, Laws of 1890, before the music books were adopted.

There is nothing in the transcript to show that it was acting under the provisions of this chapter, which it could not do unless so instructed by the electors of the district. See section 12 of said chapter. So much of the county superintendent's decision as refers to this may then be dismissed from the case.

It is further claimed that it abused its discretion by adopting an unreasonable rule. This is the real question at issue.

With their power to establish and maintain graded schools, all boards are invested with the authority to prescribe a course of study in the different branches to be taught. It is not our province to determine what the courts might hold in this case. They have held that in case a pupil refuses to conform to a course of study as prescribed by the board the proper remedy is suspension, and not corporal punishment. See 50 Iowa, 145. They have also held that a rule suspending a pupil for a certain number of absences or tardinesses is reasonable, and may be enforced. See 31 Iowa, 562. It is true that they also have held that a pupil may be suspended only for gross immorality or persistent violation of reasonable rules. See 56 Iowa, 476.

In this case it is nowhere shown that the children would in any way be injured by the study of music, or that their health or well being demanded that they should be excused from the study in question.

There is fair ground for considering the refusal to purchase the books as a failure to comply with a reasonable regulation of the board. The rule of the board was made so as to bear with equal force upon all the pupils in the school. And in order to make it as little oppressive as possible it offered the books at the least expense possible, and that none might be deprived of the benefits of the study the board authorized the teachers to loan the text-book in music without charge to children whose parents were in indigent circumstances.

The law has invested boards with very large discretionary powers, under which they may grade the schools and establish such regulations as may seem to them best for the interest of the entire school. The burden of proof in this case was with the appellants to show that the rule is unreasonable, or that in obeying it their children would suffer some hardship. This we think they have failed to do, and the decision of the county superintendent is therefore

REVERSED.

HENRY SABIN,

February 12, 1894. *Superintendent of Public Instruction.*

ELLA BENSON AND BELLE ROBERTSON v. DISTRICT TOWNSHIP OF SILVER LAKE.

Appeal from Dickinson County.

CONTRACT. It is the province of the courts of law to decide as to the validity of a contract.

COUNTY SUPERINTENDENT. Does not have the power to interpret the legal value of a contract.

This case turns upon the construction to be given to a contract. The validity of the contracts in the sense claimed by the appellants is questioned and denied by the board. The teachers assert that said contracts are of full force for the nine school months named in the contracts, and the board contends that no authority was granted by it to any one to contract for more than six months, and that therefore the contracts can have no force beyond the term of six months. It is the province of the courts of law to decide as to the validity of a contract. In the trial of an appeal as soon as it becomes clearly apparent that the principal issue is of a kind intended by our statutes to be heard and determined only by the courts of law, the appeal should be dismissed. As the real matter to be decided in this case is what the contracts actually are and what force must be given to their essential conditions, it follows that the county superintendent did not err in dismissing the appeal for want of jurisdiction.

This case is not parallel with *Kirkpatrick v. The Independent District, etc.*, 53 Iowa, 585, in which it is held that the remedy of a teacher wrongfully discharged is appeal, and not an action at once in the courts to recover compensation. In the present case the board did not make an order discharging these two teachers, but it is clearly apparent that the county superintendent could not review that order of the board without proceeding upon the assumption that the contracts had force and validity, and he did not have the power to interpret the legal value of the contract. We are compelled to find that the only remedy of the appellants is an action in a court of law. The decision of the county superintendent is affirmed and the case

DISMISSED.

HENRY SABIN,

August 11, 1894. *Superintendent of Public Instruction.*

SAMUEL FALLON v. INDEPENDENT DISTRICT OF FORT DODGE.

Appeal from Webster County.

ATTENDANCE. An actual resident may not be denied equal school advantages with other residents.

BOARD OF DIRECTORS. May adopt its own course to decide the question of actual residence.

TUITION. Failing to substantiate a claim to residence, a non-resident may attend school only upon such terms as the board deems just and equitable.

In this case the two sons of the appellant, aged nineteen and sixteen years, were refused admission to the schools unless they would pay tuition. They claimed to be residents of the district and that they were entitled to the same privileges as other residents. Being denied admission they appealed to the county superintendent, who affirmed the order of the board.

The entire case turns upon the fact of the residence of the children. If a board concludes that a child is an actual resident, it can not deny him equal school advantages with other residents. But if it can not be satisfied that an applicant is an actual resident, then it is its duty to make the same requirements that are demanded of other scholars who may be sojourning temporarily in the district.

It will be of interest to inquire as to who may decide definitely the question of residence, and as to the manner in which the matter should be considered. In view of the fact that the matter has given a great deal of trouble in a number of districts, this department has had occasion frequently to submit questions involving some phases of the subject to the attorney-general for his official opinion. In one of these opinions he uses the following language, which we think is quite applicable in this present case:

"It may be said that it is nowhere provided in the law what course the board of directors shall pursue in determining whether a pupil is a resident of the district, nor is the board directed as to the kind of evidence that shall be produced, nor as to the manner of producing it in determining such question. In the absence of such a provision directing the board as to its course of proceeding in such cases I think that body may adopt any course it sees fit, and take any kind of evidence it chooses in deciding this question of residence. I think it may make such decision from its own knowledge of facts; from the observations of the members; from the statements, sworn or unsworn, of parties who have knowledge of the facts, or from any other fair and impartial method of obtaining information bearing upon the point at issue. I do not think the board has power to compel the attendance of witnesses, or to administer oaths to them; but in gathering its information and in deciding the question it must act in entire good faith and with a view to getting the exact truth and making its decision according to the very right of the matter."

It is in evidence that the board in this case acted with deliberation, and it is not claimed that it failed to receive any testimony or statements that would tend to make a final determination of the matter by it any more clear or conclusive. In reviewing its decision on appeal the county superintendent was unable to find that it had abused its discretion, had acted without the fullest information within its reach, or had arrived at any other than an equitable conclusion.

This department has continuously held, in interpreting section 1794, that the board is to be satisfied that the residence of the scholar is actual. The burden of proof rests upon the child who has recently come into the district, to establish the fact of residence before he can be admitted to school privileges free of tuition. Failing to convince the board and to substantiate his claim of residence he can attend only upon such terms as the board may deem just and equitable.

In this case we do not find that the county superintendent erred in affirming the order of the board requiring the children of Mr. Fallon to pay tuition as an essential condition to attendance. His decision is therefore AFFIRMED.

HENRY SABIN,

September 1, 1894. *Superintendent of Public Instruction.*

G. O. ROGNESS v. DISTRICT TOWNSHIP OF GLENWOOD.

Appeal from Winneshiek County.

APPEAL. Will lie from an action of the board which is made a matter of record.

APPEAL. May be taken from the action of the board in laying the subject-matter of a petition on the table.

It appears that at a meeting of the board, held September 17, 1894, George O. Rogness presented a petition asking that the board redistrict said township, and also that an extra school be kept for four months in a certain school building, situated on the farm of E. Bolson. By vote of the board said petition was laid on the table. An appeal was taken to the county superintendent, who dismissed the same on the ground that no action was taken by the board which could furnish the basis of an appeal. The case comes now on appeal before the superintendent of public instruction.

The only point to be decided is whether an appeal may be taken from a vote to lay on the table. The words of the law in section 1829 are that any person aggrieved by any order or decision of the board may appeal. The transcript sent up by the secretary in this case reads: "Moved and carried that the bill (petition) of G. Rogness be laid on the table." It must be held that this constitutes an action on the part of the board. The motion to lay on the table was made, was voted upon, was declared carried, and is so recorded upon the secretary's book. The above conclusion is in accord with the unvarying opinion of this department for a long number of years.

It is to be noted that in the case cited by counsel for the side of the district, in 71 Iowa, page 634, the supreme court does not attempt to decide what constitutes an action. It refers to cases in which the board purposely intend, by neglect or refusal, to avoid taking an action or making an order or decision. In the case we are now deciding the board made an order, which the secretary recorded in the minutes, "that the petition be laid upon the table." The decision of Superintendent Abernethy (see S. L. Dec. 1892, page 62), that the motion to lay on the table "furnishes a convenient method of disposing of the matter," appears to be to the point. The right of the board to make such a disposition of a case can not be questioned, but it must be regarded as an action subject, like any other action, to appeal.

After studying up carefully the precedents as established by the rulings of this department, and reading with equal care the cases cited by counsel, we can arrive at no other conclusion. The case is reversed with the suggestion to the superintendent that he remand the case, in order that the board may take such further action as may seem fair and just to all concerned. REVERSED.

HENRY SABIN,

January 11, 1895. *Superintendent of Public Instruction.*

E. E. AMSDEN v. INDEPENDENT DISTRICT OF MACEDONIA.

Appeal from Pottawattamie County.

AFFIDAVIT. The affidavit may be amended when such action is not prejudicial to the rights of any one interested.

AFFIDAVIT. Must be accepted, if sufficient to give the appellant a standing.

APPEAL. Mere technical objections should not prevent the fullest presentation of the merits of the case in the trial of an appeal.

TESTIMONY. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

There are certain facts in this case concerning which there is no disagreement. The board of directors contracted on the twenty-sixth day of March, 1895, with E. E. Amsden to teach upon terms clearly set forth in the contract as signed by both parties. Concerning the validity of this contract there is no doubt expressed.

Upon the fifth day of July the said Amsden had a hearing before the board upon definite and well specified charges. He was duly notified of these charges, was present both himself and by counsel at the time of trial, and was allowed to make his defense. The board took time for deliberation, and finally on the eighth day of July made an order annulling the contract, and in effect discharging the teacher. From this decision Mr. Amsden appealed to the county superintendent, who on the third day of September rendered a decision dismissing the case on account of the legal insufficiency of the affidavit.

There are only two questions involved. Was the original affidavit sufficient to enable the county superintendent to assume jurisdiction of the case? And could the affidavit be amended at the time of trial?

It must be held that the lapse of thirty days from the making of the order sought to be appealed from does not affect in any way the right of the appellant to amend his original affidavit. If he offered his amendment at the time of trial he complied with the usual practice. Whether the amendment should be admitted depends upon its nature. If it set up a new and distinct issue, one not involved in any way in the original affidavit, then the county superintendent should refuse to allow the amendment to be made. See case on page 141 in S. L. Dec. 1884. An amendment is, however, admissible when it tends to correct mistakes or to make clearer or more explicit the charges contained in the original affidavit. See case on page 25, S. L. Dec. 1892. In the case at bar the amended affidavit introduces no new issue and does not in any way prejudice the rights of any person. We think the county superintendent committed error in refusing to admit the amendment.

Now as to the original affidavit. We do not understand what is meant by the term *legal insufficiency*. It is to be remembered that no very definite rules have been or can be adopted for the trial of cases before the county superintendent. This department has always held that the system of appeals was intended as a speedy and inexpensive method of adjusting school difficulties. See case on page 25, S. L. Dec. 1892. The supreme court has held that it "is abundantly manifest

that the legislature designed to afford an inexpensive and summary way of disposing of these cases." See 68 Iowa, 161. Mere technicalities can not be allowed to intervene to defeat the ends for which the system of appeals was instituted.

The appellant sets forth in his affidavit that the board acted through passion and prejudice, and that he did not have the fair and impartial trial guaranteed to him by section 1734. On these as well as on other grievances set forth in the affidavit the appellant has the right to be heard before the county superintendent, to introduce testimony, and to be heard, by himself or his counsel.

The law makes it obligatory upon the county superintendent to hear such a case, to weigh carefully and without prejudice the evidence and the arguments, and to render his decision in accordance with his judgment. This is the more important in such cases, because the teacher has no other remedy in law of which he can avail himself. Through some informality which does not in any way affect the issues in the case he should not be deprived of his right of appeal.

We say nothing of the merits of this case. We know nothing of them. We believe the affidavit of appeal was sufficient to give the appellant a standing before the county superintendent, and that is the only point upon which we are called to pass.

The case is remanded to the county superintendent, with directions to fix a time of hearing the same within fifteen days from the date of this decision, and to notify all concerned, that they may be present.

REVERSED AND REMANDED.

HENRY SABIN,

November 21, 1895. *Superintendent of Public Instruction.*

D. C. MCKEE v. DISTRICT TOWNSHIP OF GROVE.

Appeal from Humboldt County.

SUBDISTRICT BOUNDARIES. When an action has been reversed by the county superintendent, and that decision affirmed by the superintendent of public instruction, the board can not act again until a material change has taken place.

SCHOOLHOUSE SITE. At time of purchase need not necessarily be upon a highway.

DISCRETIONARY ACTS. An appellate tribunal is not to decide mainly whether the action complained of was wise, or the best that might have been taken, but simply whether a reversal is required by the evidence.

In this case the board on September 16, 1895, made two orders. By the first of these it divided subdistrict number seven in said township into two subdistricts, to be known as number seven and number nine, and established the boundary line between them. By the second action it ordered the removal of the schoolhouse, now located on section 34, township 92 north, range 28 west, removed and located on section 33, township 92 north, range 28 west, on the Sherman and Dakota road, and authorized the president to draw an order for the payment of the same on report of the committee.

From these two actions D. C. McKee appealed to the county superintendent, who reversed both actions of the board and relocated the schoolhouse on the old site. From the order removing the schoolhouse D. C. McKee takes an appeal to

the superintendent of public instruction. The former action of the board dividing the subdistrict and reversed by the county superintendent is not in the case. This simplifies the matter and leaves as the only point to be considered the discretionary act of the board in ordering the removal of the building to the new site.

The district as at present constituted is four and one-half miles from east to west in extreme length. The two schoolhouses stand within a mile of each other.

There are several points brought in by the county superintendent and in the arguments of the attorneys which need but a brief notice. It appears that at a previous meeting of the board it took action removing the schoolhouse to a site near the present new site, which action was reversed by the county superintendent, and that there has been no material change in the district since that. This does not act as a bar in any sense to the present proceedings. For a full discussion of this point see *P. O'Connor, Jr., v. District Township of Badger*, page 108, S. L. Dec. 1892.

The only case in which the board can not act again without a material change is when a former action has been reversed by the county superintendent, and on appeal to the superintendent of public instruction has been affirmed. In the case at bar the county superintendent reversed the action of the board, but appeal was not taken to the superintendent of public instruction.

Much stress has also been laid upon the question whether the road upon which the new site is located is a highway in the sense intended by the law. Section 1826 has reference to a case in which the board condemns a piece of land for schoolhouse purposes. But when said site is purchased by the board the provisions of sections 1825-1826 do not apply. See, also, for a full discussion of this point, case of *H. D. Fisher v. District Township of Tipton*, page 86, S. L. Dec. 1892.

If the site selected and purchased should be inaccessible it might be a case warranting the reversing of the board, but in the case at bar the site purchased by the board is on a highway, which both parties acknowledge has been traveled more or less for at least nine years.

This leaves the only point for consideration whether the board abused its discretion in ordering the removal of the schoolhouse. The location of the schoolhouse is a matter entirely within the discretionary power of the board. Its action ought not to be reversed by the county superintendent without the clearest proof that it has acted through passion or prejudice, or from some improper motive. There is nothing in this case whatever to show that the board was not endeavoring to do what it believed to be for the best interests of all the people of the subdistrict. The vote in the board stood four in favor of removal and one opposed.

We can not discover that there are any reasonable grounds for reversing its action. We are not called upon to decide whether it acted wisely or unwisely, but simply and solely whether there is sufficient evidence to warrant the county superintendent in reversing its action on the grounds of abuse of discretion. We regret very much that we are obliged to reverse the action of the county superintendent, and do not doubt that he acted according to his best judgment. We are, however, compelled to decide that the board did not in any way so abuse its discretion as to warrant an interference. REVERSED.

HENRY SABIN,

February 8, 1896. *Superintendent of Public Instruction.*

HUGH MCMILLAN v. DISTRICT TOWNSHIP OF WAVELAND.

Appeal from Pottawattamie County.

BOARD OF DIRECTORS. It is the first duty of a board to co-operate with and assist the teacher in the conduct of the school.

TEACHER. A teacher may justly claim and expect to receive the assistance and advice of the board, and especially the help of his own subdirector, in the proper conduct of his school.

BOARD OF DIRECTORS. In exercising its power in a semi-judicial capacity the board should be able to show the very best reasons for its conclusions.

TEACHER. It is alike due to the dignity of the board and the rights of the teacher that no one should be discharged except after thorough investigation and the clearest proof. If possible, the teacher should be shielded from the stigma of discharge.

After a trial, conducted in accordance with law, the board, by a vote of three to two in a board of nine members, discharged the teacher for incompetency, in accordance with the provisions of section 1734. Hugh McMillan appealed to the county superintendent, who reversed the order of the board. John W. Rush, president of the board, appeals here.

The proceedings of the board in this case were entirely regular, and it is not claimed that the law was violated by it in any particular, as to its manner of proceeding. The question to be determined by us is, was the county superintendent warranted in finding that the board abused its discretion to that extent to require a reversal of its action in discharging the teacher.

The testimony discloses a very undesirable condition in the school in question, as to the matter of discipline and behavior of the scholars. The testimony discloses the fact that many of the older scholars, instead of being an assistance to the teacher, and a credit to themselves and their parents, were insubordinate, disobedient and disrespectful to the teacher. The testimony also discloses that the subdirector, instead of assisting the teacher in maintaining discipline and good order in the school, withheld that support so much needed by any teacher under such circumstances. It is not shown nor is it claimed that any of the board had visited the school for the purpose of aiding the teacher in enforcing rules for its government, as it is required to do by the first part of section 1734. Nor did the subdirector visit his school, as he is required to do by the latter part of section 1756.

The testimony in the case is to the effect that after the incorrigible scholars were dismissed the teacher was much more successful in his work. We can not find from the testimony that the teacher failed in any important particular to attempt to do his full duty by his school, and to regard equally the rights of every scholar. Under all circumstances, we think it is the first duty of any board to co-operate with and assist the teacher in the conduct of his school. This is the duty of the local subdirector in a peculiar sense, as he is in close relation to his own school and his teacher. A teacher may justly claim and expect to receive the assistance and advice of the board, and especially the help of his own subdirector, in the proper conduct of his school. See case on page 135,

S. L. Dec. 1892. It is often the case that a little timely assistance, offered at the right time and in the proper spirit, will aid a teacher very materially in maintaining good order and discipline in his school, and in preventing many difficulties from arising which might, under a different course, almost certainly tend to injure the efficiency of the school.

In this case, two of the five members present at the trial voted to discharge the teacher, two voted in the negative, leaving the casting vote with the subdirector of the school, who, as we have seen, was out of sympathy with the teacher, and had failed to afford his assistance to a successful management of the school. While it is true that in general the discretionary acts of a board are entitled to great weight, yet it is also true that in exercising its power in a semi-judicial capacity, the board should be able to show the very best reasons for its conclusions. Except upon the clearest proof, and the most convincing reasons apparent to the board that the good of the school demands the discharge of the teacher, a teacher should be shielded from the stigma of discharge, and the authority of the board and the respect due the board and its teachers, should be maintained, by a decision on the part of the board to assist and support the teacher in bringing his school to a conclusion as nearly as possible satisfactory to the board and creditable to himself. The decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

May 20, 1896. *Superintendent of Public Instruction.*

S. B. HEATH v. DISTRICT TOWNSHIP OF IOWA.

Appeal from Wright County.

COUNTY SUPERINTENDENT. On appeal may do more than the board might have done.

INDEPENDENT DISTRICT. The boundaries outside the town plat depending upon the petition of the electors, such boundaries may not be fixed until petitioned for.

This is a case arising under the amendment to section 1800 made by the Twenty-fifth General Assembly. It is the effect of this amendment that when a town or village has less than two hundred inhabitants and not less than one hundred inhabitants, the territory contiguous to such town plat may not be included in the proposed independent town district except on a written petition of a majority of the electors residing upon such territory outside the town plat.

In this case the board refused to fix the boundaries of a contemplated independent town district. From its order appeal was taken to the county superintendent, who reversed the order of the board and fixed the boundaries of a contemplated independent district, but different from the boundaries asked for in the petition presented to the board from the electors residing outside the town.

Without considering any of the other merits of the case it becomes necessary to inquire whether the county superintendent might in reversing the order of the board, fix different boundaries than those petitioned for by the majority of the electors residing upon the outside territory. We find that the territory included in the contemplated district by order of the county superintendent excludes at least four and one-half sections that were before included. Did the county superintendent have power to fix different boundaries for the outside territory from those petitioned for when application was made to the board, without first

himself having a written petition from a majority of the resident electors upon the territory outside the town which said county superintendent included within the contemplated independent district? We think he did not. If our view is correct it is decisive of the case and we will be compelled to reverse the county superintendent's decision.

Not many cases have arisen under the amendment to section 1800, found in chapter 38, Laws of 1894. But it seems to us that there can be no doubt as to the intention of the general assembly to require that before territory outside a town or village of over one hundred and of less than two hundred inhabitants may be included within a contemplated independent town district, a majority of the electors must consent that such boundaries may be fixed. Any other conclusion would seem to defeat the purpose of the amendment. It is not reasonable to urge that the county superintendent would have greater power on appeal than the board would have.

It will be noticed that this decision has no reference whatever to the merits of the case as to the boundaries which should be fixed for a town independent district. That matter is still within the discretion of the board under the limitation of the law.

REVERSED.

HENRY SABIN,

August 3, 1896. *Superintendent of Public Instruction.*

LETHA JACKSON v. INDEPENDENT DISTRICT OF STEAMBOAT ROCK.

Appeal from Hardin County.

TEACHER. Full opportunity must be afforded the teacher to make defense against charges.

BOARD OF DIRECTORS. Is required by the law to visit the school and to aid and sustain the teacher in maintaining order and discipline.

TEACHER. Should not employ unsuitable and unusual methods of punishment.

On the twenty-eighth day of November, 1896, the board voted to discharge from its employ Miss Letha Jackson, the teacher in the intermediate room of its school. The reason, as spread upon the record, is that she inflicted inhuman and cruel punishment upon her pupils, especially upon Minnie Platts. An appeal was taken to the county superintendent, who reversed the order of the board. Appeal was then taken to the superintendent of public instruction.

There is no doubt from the testimony sent up with the transcript that Minnie Platts was insolent and disobedient, and also that the teacher failed to control herself, and that they engaged in an unseemly squabble in the presence of the school. It is also evident that the teacher was accustomed to use methods of punishment which are, at the best, not customary in well disciplined schools. Much of the testimony is conflicting, and that part of it relating to matters which occurred under a previous contract cannot be allowed to have any weight in determining this case.

The contract, as placed in evidence, specifies that the teacher shall not make use of any cruel or unusual punishment in the discipline of the school. Whether she violated the contract in this respect is a matter to be determined by the board, and in doing so it may avail itself of any sources of reliable information

within its power. The notice sent to the teacher, November 23, 1896, charges as follows: "For inhuman and unjustifiable punishment of pupils by pinching, pulling their ears, pulling their hair, and pounding their heads and faces with your fists, and pounding their heads on the wall, floor, and seats of the schoolroom with your fists." November 28th she was notified by the secretary that she was dismissed from the school. At a meeting of the board held November 27th, the president appointed the entire board an investigating committee. It appears that it carried on its investigation by questioning the pupils in Miss Jackson's room, and that its vote to dismiss her was based entirely upon information obtained in this way, as appears in the records of November 27th. This method placed the teacher at an immense disadvantage. It would at least have been just to have examined these pupils in her presence, and that she should have been allowed to correct their misstatements, if any, and to give the investigating committee her own account of the matter. We can not consider this an impartial method of conducting an investigation against a teacher. Justice would seem to demand that she should have been furnished a copy of the findings of this committee, and should have been given a reasonable time in which to prepare her defense. The board places on file the unanimous report of this investigating committee recommending that the teacher be discharged. It, in effect, finds her guilty and asks her to show cause why sentence should not be pronounced.

Now, as to Miss Jackson's failure to appear before the board. Her physician sent a certificate to be read at the first meeting, stating that she was not able to attend on account of sickness. At the same meeting her attorney, Mr. Albrook, in a letter, asks that the board appoint Monday afternoon as a time for hearing the case. It appears to have been a reasonable request and should have been granted in justice to all parties. That Miss Jackson sent her statement denying the charges and averring that she, by her conduct, had given the board no occasion to investigate, furnishes an additional reason and a very strong one why she should have been given the opportunity to be heard by counsel of her own choosing. We do not think that the board intended by an early adjournment to shut her counsel out Saturday night, but it ought to have shown an anxiety to have him present if possible, in order that it might ascertain the very right and justice of all parties in the case. Miss Jackson could very justly plead that her presence would avail nothing after the board had before it a report signed by every member of that tribunal, saying that she ought to be dismissed from her school. The board seems also to have forgotten that the law makes it its duty to visit the school and to aid and sustain the teacher in her efforts to maintain order and discipline. It has duties on the side of the teacher as well as on that of the pupils or the community at large.

We do not wish to be understood as upholding a teacher in the methods of punishment which appear in this case. To pull the hair or the ears of pupils, or to strike them with the fists, are relics of another age of school government, and can not be justified today. We only reach the conclusion that the teacher did not have that fair and impartial trial before the board that is contemplated in the law. Therefore the decision of the county superintendent is AFFIRMED.

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HENRY SABIN,

April 7, 1897. *Superintendent of Public Instruction.*

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*The teacher's right to recover for wrongful dismissal in this case was sustained in 110 Iowa, 313.

R. ODENDAHL *et al* v. DISTRICT TOWNSHIP OF GRANT.

Appeal from Carroll County.

APPEAL. Will not lie from joint action of boards making settlement of assets and liabilities.

COUNTY SUPERINTENDENT. Should dismiss an appeal as soon as it becomes certain that the leading issue may be heard and decided only by a court of law.

JURISDICTION. It is very undesirable to bring matters involving a money consideration before the county superintendent on appeal.

Certain territory in the civil township of Grant and part of the independent district of Carroll was restored to the district township of Grant. A settlement of assets and liabilities between the two districts necessarily followed. Robert Odendahl and others were aggrieved with the conclusions reached by the two boards, and took an appeal to the county superintendent, who reviewed the questions presented to him, finding in effect as to the time when the territory did actually become a part of the district township of Grant, as to the disposition of taxes during a period when the control of such territory was in controversy, and also whether the agreement entered into by the board should be changed by him.

The first question we are required to consider is whether the county superintendent had jurisdiction to hear the case. If we find that he did not have jurisdiction, it will of course be impossible for us to review the questions he determined, and we shall be compelled to dismiss the case for want of jurisdiction.

It has been the uniform opinion of this department that appeal will not lie from the joint action of boards in making the settlement of assets and liabilities required by section 1715, but that the only remedy, if the law affords relief, would be an action in court to protect the rights of the persons complaining. In order that the matter might be more authoritatively determined, so that this case may be a guide to school officers, we submitted an inquiry to the attorney-general, and quote briefly from his reply:

"Your favor came duly to hand, requesting my opinion upon the following question:

"When the two boards have made a division of assets and liabilities, under section 1715 of the code, will a person claiming the settlement to be inequitable and insufficient as to the amount agreed upon have the right to appeal to the county superintendent from such agreement, that is, from such joint action of the boards taken as provided in section 1715, will an appeal lie?

"The section in question provides that the respective boards shall make an equitable division of the then existing assets and liabilities between the old and the new districts; it also provides that in case of the failure to agree the matter may be decided by arbitrators chosen by the parties in interest. It has been held by our supreme court that under this section the boards of directors become a special tribunal for the determination of the respective rights of the parties. And it is held that this tribunal thus constituted has exclusive jurisdiction. The action of the special tribunal, consisting of the several boards of directors, is not the action or order of a board of directors, but an order of a special court for the determination of the rights of the several new districts with reference to the as-

sets and liabilities of the old district of which they formed a part. The statute does not give an appeal from such tribunal. My conclusion is that a right of appeal does not exist and a person claiming the settlement to be inequitable has no right of appeal to the county superintendent."

The opinion of the attorney-general is decisive of the case. We think there are many added reasons why questions of this kind should not be heard on appeal before the county superintendent. That officer should not be compelled to review matters involving the jurisdiction over territory, the disposition of taxes, or the right and justice of finding of boards upon a settlement of assets and liabilities. But these a court may very properly do, as its jurisdiction for such purposes is not questioned, and the precedents for the control of the courts over this class of cases are well established. It is very undesirable to attempt to bring matters involving a money consideration before the county superintendent on appeal. As soon as it becomes clearly apparent that the principal issue is of a kind intended by our statutes to be heard and determined only by the courts of law, the appeal should be dismissed. In this case it was the duty of the boards interested to make a proper settlement. If fraud or other irregularity was urged, perhaps a court would afford relief to a complainant, but an appeal to the county superintendent would not become a remedy.

We are compelled to remand this case to the county superintendent with instructions to dismiss the case for lack of jurisdiction. DISMISSED.

HENRY SABIN,

June 16, 1897. *Superintendent of Public Instruction.*

C. M. BAXTER v. SCHOOL TOWNSHIP OF BEAR GROVE.

Appeal from Cass County.

PUBLIC ROAD TO SCHOOLHOUSE. The board is bound to carry out the vote of the electors in the matter of opening roads to schoolhouses.

ABUSE OF DISCRETION. The board may not substitute its own discretion for the clearly expressed instruction of the electors.

At their regular meeting, on the second Monday in March, 1897, the electors voted a schoolhouse tax of $200 and instructed the board to open an east and west road to intersect a north and south road which would give Mr. Baxter access by the public road to his schoolhouse. Instead of carrying into effect the vote of the electors, the board took steps to secure a different road, and from their action in so doing appeal was taken to the county superintendent, who reversed the order of the board, finding that the board should have attempted in good faith to carry out the expressed wish of the electors. The board appeals here.

It is shown in the testimony, and it is not denied, that the board thought best to attempt to secure the cheapest road possible, in order to provide a way by which Mr. Baxter could reach the schoolhouse. The real question in this case, and the one which the county superintendent was compelled to determine, was whether the board committed error in its discretion. From a careful examination of the entire case we must conclude that the county superintendent made no mistake in determining that it is the duty of the board to make a strenuous effort to fulfill the intention of the electors. We think it was the duty of the board to carry into execution the vote of the electors, if possible to do so, and if

not possible, the attempt should have been made, and the matter then referred back to the electors for further instructions. See first part of section 2778 and first division of syllabus in appeal case on page 17 S. L. Decisions 1897. We think it was not within the power of the board to substitute its own discretion for the clearly expressed instruction by the electors.

It is clear that the electors intended to provide relief for Mr. Baxter. This could be done only by providing him with a public highway upon which his children could reach school. This matter is of such importance to Mr. Baxter, and the vote of the electors providing the means by which the road was to be secured was so definite, that we feel compelled to suggest to the electors that at their annual meeting on next Monday, the fourteenth day of this month, they indicate still more clearly their desires in the matter, and that they instruct the board what further steps shall be taken by the board. As indicated, we can see no reason to interfere with the finding of the county superintendent and his decision is therefore AFFIRMED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, March 9, 1898.

JOHN MARTIN v. SCHOOL TOWNSHIP OF BAKER.

Appeal from Guthrie County.

NOTICE OF APPEAL. The superintendent of public instruction may not entertain an appeal unless thirty days' notice of such appeal has been served upon the adverse party.

COSTS. Before an appeal from the order of the county superintendent taxing costs can be entertained by the superintendent of public instruction, a motion to retax such costs should be filed with the county superintendent.

The question involved in this case is the taxing of costs. In 1897 John Martin petitioned the board of directors of the school township of Baker for a school for the accommodation of his ten children. The board refused to grant the request of the petitioner. Appeal was taken to the county superintendent, who affirmed the action of the board. In rendering his opinion, the county superintendent taxed the costs, amounting to $30.75, to appellant Martin. From the action of the county superintendent Martin appeals to this department.

Counsel for appellee moves the dismissal of the appeal for the following reasons: First, that notice of appeal was not given as is required by section 2820 of the code of Iowa. Second, that all of the record in the case was not certified to this department by the county superintendent, and for that reason the department should refuse to consider or entertain the appeal. Third, that the record nowhere discloses that the county superintendent, before whom the appeal was tried, ever had opportunity or occasion to pass upon the question of taxation of costs, that no motion or request was made for him to retax. Fourth, that said appeal from decision of county superintendent was taken too late.

The question to be determined is whether this department has jurisdiction to hear the case. Section 2820 provides that "thirty days' *notice* of the appeal shall be given by the appellant to the county superintendent and also to the adverse party."

There is nothing in the transcript to show that this notice was served either on the county superintendent or the adverse party. For many years it has been

the holding of the supreme court of the state of Iowa, that appeal can only be taken by serving a written notice upon the adverse party or his attorney, and the clerk. In the 74th Iowa the court rules that service of notice of appeal is essential to give a court jurisdiction of the case and that fact must be shown by the record. A recent general assembly makes similar provisions applicable in cases of appeal to this department.

While it is true that only a partial record is presented, we are of the opinion that the transcript is sufficiently complete to enable us to pass upon the question raised. By this we would not be understood as favoring the certification of only a part of the transcript, in case of appeal. In regard to the taxation of costs, the code of 1897 provides that in all matters triable before him the county superintendent "shall have power to issue subpoenas for witnesses which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the contingent fund of the proper school corporation, upon a certificate of the superintendent to and warrants of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or, if in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and shall tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon be made, which shall be collected as other judgments."

The question of costs is one entirely new to this department. Prior to October 1, 1897, any one aggrieved by the order or decision of a board of directors could, without cost, appeal to the county superintendent and again to the superintendent of public instruction.

The provisions of the law are plain. If the county superintendent is of the opinion that the proceedings were instituted without reasonable cause, or the case be not sustained on appeal, he shall tax all costs to the party responsible therefor. A careful study of the case reveals no error on the part of the county superintendent. The costs appear to have been taxed and filed as required by the statute. Any person aggrieved might upon application, have had the same retaxed and all errors corrected.

Counsel for appellant argues that the question at bar was presented informally to the county superintendent, who overruled his objections, after having considered the same. An additional transcript of the proceedings filed by the county superintendent, substantiates the claim of counsel but nullifies the force of it by stating "that no formal or written objection to the taxing of said costs were filed by said appellant, nor any motion to retax said costs." In the 101 Iowa, case of *John Roane, appellant, v. J. A. Hamilton et al.*, involving the question of costs, the supreme court held that since no motion was made in the district court to retax costs, no consideration would be given the matter by the supreme court. It can not, we think, be contended reasonably that rules of court practice, so far as applicable, should not be followed in matters triable before this department. A failure on appellant's part to avail himself of his legal rights may not wisely be overlooked here.

In regard to the time in which appeal may be taken, the law provides that thirty days' notice shall be given. The transcript shows that the case was

heard by the county superintendent, January 7, 1898. The affidavit of appeal was received by special delivery Sunday, February 6, and filed Monday, February 7, 1898. We think appeal was taken in time, since in computing time, the first day shall be excluded and the last day included, unless the last day falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. Code, section 48, sub-section 23.

While the counsel for appellee does not refer to the fact, we find in addition to the foregoing that the affidavit of appeal presented is defective in this, that the notary, before whom appellant was sworn, failed to attach notarial seal. This, however, has not been considered irremediable in the consideration of the appeal.

After having carefully considered the whole matter, we are of the opinion that the case is not legally before us, since the transcript fails to show service of proper notice and a motion to retax costs.

The legality of this department entertaining any appeal in which a money consideration is the principal issue is seriously questioned. Certainly neither the county nor the state superintendent is authorized to render judgment for money. Acts of these officers are held by the courts to be ministerial, and not judicial. To burden this office with the adjustment of affairs involving such considerations as can best and only be determined finally by the courts is, from our point of view, to place unnecessary and unproductive labor upon the department.

DISMISSED.

RICHARD C. BARRETT,

Des Moines, Iowa, May 26, 1898. *Superintendent of Public Instruction.*

THOMAS HUDGENS v. INDEPENDENT DISTRICT NO. TEN, CEDAR FALLS TOWNSHIP.

Appeal from Black Hawk County.

DISCHARGE OF TEACHER. A teacher can not be discharged by the board except after a full and fair investigation.

SPECIAL MEETING. A meeting of the board, called for no specific purpose and of which the teacher was not served with due and proper notice, could not legally discharge such teacher.

DEFENSE. The teacher is entitled to a reasonable time to prepare for and make his defense. The refusal of the board to grant a teacher a single day's time in which to make such defense is not only an abuse of discretion but a violation of law.

On the third day of January, 1898, Thomas Hudgens, a teacher in Independent District Number Ten, Cedar Falls Township, was dismissed by a majority vote of the board. From the action of the board he appealed to the county superintendent, who affirmed the order of the board. From his decision appeal is taken to this department.

Section 2782, laws of Iowa, concerning the dismissal of the teacher, is as follows: "It may by a majority vote discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board, held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor."

Did appellant have a fair trial? Was the meeting held for the purpose of discharging the teacher or giving a full and fair investigation? Did the teacher have a reasonable time to make defense?

In his decision the county superintendent says: "Then from the minutes of the school board as kept by the secretary, January 3d, we must determine what occurred at this meeting." If the correctness of the record were unquestioned this would be true.

In the case of *Appleton Park v. Independent District of Pleasant Grove*, this department held that "the fact that the transcript referred to is not certified to by the secretary, and the further fact that he was not present at the board meeting in question, and wrote the minutes as dictated from memory by the president of the board, three days after the meeting, fully justified the superintendent in ruling it out and admitting parol evidence." The testimony of the secretary of the board is to the effect that the original notes made by himself at the time of the discharge of the teacher were destroyed; that the notes from which the certified transcript was made were written days after the meeting. His further testimony, which is not denied, is that the record of the meeting as finally certified to the county superintendent was written by himself, aided by the president and another member of the board, after appeal was taken to the county superintendent. A record of such a character "made in view of appeal" can scarcely be said to be its own best evidence.

In his decision the county superintendent quotes a former opinion of this department to this effect: "The discharge of a teacher is largely within the discretionary power of the board. It is to guard the rights of the school, as well as the rights of the teacher. *After a full and fair investigation* it is its duty to act as it deems best under all circumstances of the case. This being the case, it is the duty of the county superintendent not to interfere with the action of the board unless he is convinced that it in some way abused its discretion. He is right in sustaining the board even though as an individual he would have preferred some other action on his part."

In the case at bar did the board make that full and fair investigation contemplated? We think not. The evidence submitted reveals many irregularities on the part of the board. The meeting was not called for a specific purpose. Appellant was not served with due and proper notice. The law provides that a reasonable time shall be given the teacher in which to make his defense. Appellant's request for a single day's time was refused. In fact, according to the president's own testimony, no investigation took place.

The school may not have been as ably conducted as the board desired, or in accordance with the particular views of the different members, but we can not approve of the action of the board in discharging the teacher without first making that full and fair investigation contemplated by the statute. A teacher is the employe of the board and as such is entitled to its co-operation and support. For certain causes the teacher may be discharged, but only after charges preferred have been carefully and impartially investigated. We have given the case unusual attention and are forced to the conclusion that the teacher was not accorded that investigation which the law intends. The decision of the county superintendent is REVERSED.

RICHARD C. BARRETT,

Des Moines, Iowa, June 23, 1898. *Superintendent of Public Instruction.*

R. A. KLETZING v. THE INDEPENDENT DISTRICT OF MONTOUR.

Appeal from Tama County.

DISCHARGE OF TEACHER. The action of the board in discharging a teacher, after a full and fair investigation, will not be reversed unless it is clearly shown that that board violated the law, abused its discretion, or acted with manifest injustice.

COUNTY SUPERINTENDENT. The county superintendent has only appellate jurisdiction, and should sustain the action of the board unless it be clearly shown that they violated law or abused their discretion.

On February 14th, J. D. Booher, a resident of Montour, filed with the secretary of the school corporation a complaint charging the principal, R. A. Kletzing with incompetency, partiality, the infliction of inhuman and cruel punishment and general inability to govern the school over which he had supervision.

The record, which is unquestioned, shows that a notice of the hearing was served on the appellant and the time fixed for the nineteenth day of February, at which time all parties interested appeared. Appellant was represented by his attorney who filed a general statement denying charges preferred. Affidavit of appellant was also filed claiming that the board had negligently or willfully refrained from visiting the school or in any manner advised with or directed appellant in his conduct and management of the school. The hearing was concluded on February 26th and appellant was discharged by the unanimous vote of the board. Appeal was then taken to the county superintendent who reversed the board. The board appeals to this department.

As it appears to us, the question to be determined is of sound judgment and discretion and not of law. Should it appear that the county superintendent opposed his judgment to the judgment of the board, there is but one course for an ultimate tribunal to pursue.

It is the earnest desire of this department to sustain decisions of county superintendents. Their official acts and the correctness of their views will not be set aside unless for cause. A similar principle should be held by county superintendents when called upon to pass upon the decisions or orders of boards of directors.

For almost a third of a century it has been the holding of this department that discretionary action of a board should be affirmed on appeal, unless by the evidence it is clearly proven that the board violated law or abused its discretion. "If there is reasonable doubt the board is entitled to its benefits. The action of the board may not be wholly approved by the judgment of the county superintendent, but if it be not illegal or clearly unjust, it should be sustained." See *Edwards et al v. District Township of West Point*, School Law Decisions of 1884.

The county superintendent is a court of appellate jurisdiction and is compelled to sustain the action of boards unless the evidence clearly indicates that they have violated law, acted with passion or prejudice, or with manifest injustice, or abused their discretion.

In the case before us we are inclined to the opinion that the superintendent passed upon the case as though he had original instead of appellate jurisdiction,

and failed to give due consideration to the discretionary power granted school boards.

The power to discharge a teacher is conferred upon boards of directors by section 2782, which in part reads as follows: "It may by a majority vote discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor."

Affiant, in appealing to the county superintendent, alleges that he was not accorded a full and fair investigation. In reversing the board the county superintendent so found and assigned as a reason that Mr. Stevens, president of the board, appeared as the prosecuting attorney.

We can not concur with the view expressed by the county superintendent that appellant was not given a fair trial. That the board gave the case careful thought is shown by the fact that the hearing occupied nearly all of a week. Appellant was given every opportunity to prepare for his defense, to call witnesses, and was ably represented by his attorney. So far as we have been able to learn from the transcript, which appears to be complete, it is not shown that malice or prejudice was exhibited on the part of any member of the board. The fact that Mr. Stevens, the president of the board, is an attorney, may not be considered prejudicial. Naturally, as president, he would be expected to lead in the investigation of complaints, since in cases of this kind the board may not employ counsel.

The claim that the board had negligently or wilfully refrained from visiting the school or advising with the teacher, is worthy of most careful consideration. It is the duty of the board to aid teachers in the government and management of schools; to counsel with them and co-operate in the promotion of all the educational interests of the district. It does not appear that members made regular and frequent visits to the school, but that general interest was manifested and a desire shown on the board's part to strengthen the schools is evidenced by the fact that the course of study was revised, rules for the government of teachers and pupils adopted, and consultations held by members of the board with the principal.

In his decision, the county superintendent finds that appellant Kletzing was obstinate and worked in opposition to the board of directors; that his punishment of pupils was open to severe criticism; that he was disliked; that he did not give satisfaction; that a very undesirable condition existed; and that he did not exercise that judgment necessary to carry on the school harmoniously and without friction. The evidence clearly sustains the above enumerated findings. The opinion of the county superintendent is REVERSED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, Iowa, September 10, 1898.

J. L. MUNN v. SCHOOL TOWNSHIP OF SOAP CREEK.

INDEPENDENT DISTRICT BOUNDARIES. The provision of section 2794 of the Code, requiring the board of a school township, upon proper petition, to establish the boundaries of a proposed independent district, is mandatory.

BOUNDARIES. Must include all of the city, town or village, and also such con-

tiguous territory as is petitioned for by a majority of the resident electors but may include additional territory.

COUNTY SUPERINTENDENT. On appeal the county superintendent can make such order touching the boundaries as the board should have made.

TIME. The time in which to take the initiatory steps to form an independent district is not fixed by the statute.

COMPLETION. The provision of section 2796, "that the organization of such independent district shall be effected on or before the first day of August of the year in which it is attempted," is directory and has special reference to the levying of taxes. It does not apply where by reason of an appeal to the county superintendent, or to the superintendent of public instruction the completion is not effected until after such date.

ELECTION. The boundaries having been fixed, it the duty of the board to give notice of a meeting of the voters of the territory included in the proposed district.

MANDAMUS. Should the board fail or refuse to give the required notice of election, they may be compelled to do so by mandamus.

ELECTORS. The electors are the sole and final judges of the desirability of a separate organization.

This case relates to the formation of an independent district out of a school township.

Residents of the village of Belknap petitioned the board of directors to form an independent district. The board by a vote of two to six refused to establish the boundaries of the district. From the board's refusal appeal was taken to the county superintendent.

Before this officer motion to dismiss was made by appellee on the ground that *mandamus* and not appeal was the proper remedy.

The statute provides that a writ of mandamus "shall not be used in any case where there is a plain, speedy and adequate remedy in the ordinary courts of law, save as herein provided." Section 4344 Code. In the 73 Iowa, 134, case of *Barnett et al v. Board of Directors Independent District of Earlham*, the supreme court held that where the party has the right of appeal to the county superintendent, mandamus will not lie against a board of directors.

It is provided in the school laws that "any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may, within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the county superintendent of the proper county." Section 2818, Code. "Upon the hearing of the appeal the county superintendent is required to hear testimony on behalf of either party. The fullest opportunity is allowed for a thorough investigation of the matter of the appeal and the superintendent is required to make such decision as shall be just and equitable. And if the appellant is aggrieved at the decision of the county superintendent he may appeal in like manner to the state superintendent of public instruction." 35 Iowa, 444. We find no error on the superintendent's part in overruling the motion to dismiss.

The superintendent reversed the board and established the boundary lines of Belknap, and ordered that the district consist of the present town plat. J. L.

Munn appealed to the superintendent of public instruction, who heard the case July 30th.

At the hearing before this department, appellee moved to dismiss the case for the reason that the organization of the contemplated independent district could not be completed on or before the first day of August, 1898.

The time in which to take the initiatory steps to form an independent district is not fixed. The law says: "Upon the written petition of any ten voters * * * such board shall establish the boundaries." A petition signed by the requisite number of voters might be presented at such a date as to preclude the possibility of completing the organization on or before the first day of August. To grant reasonable requests made by attorneys for continuance might also prevent the formation of districts. The wishes of parties interested could easily be thwarted by dilatory tactics on the part of attorneys. Under the laws of this state both county and state superintendents are called upon to perform many and varied duties. Not infrequently engagements are made weeks and sometimes months in advance. In some cases it is quite impossible for these officers to grant a hearing and render a decision within the time mentioned in the statute. While it may be desirable that the organization be perfected within the statutory time, we are inclined to the opinion that the date is only directory and has special reference to the levying of taxes. To sustain the motion to dismiss would establish a precedent far-reaching in its effects and one tending in many cases to hinder educational advancement.

The record upon which the county superintendent decided the appeal shows the following facts, which are undisputed: The village of Belknap is located at the crossing of the Rock Island and Wabash railways on the east one half (½) of section thirty-five (35) and the west one-half (½) of section thirty-six (36) and includes forty acres more or less. On the twenty-first of March, sixteen residents of Belknap petitioned the township board to form an independent district. At the time action was taken by the board there was on file a petition signed by B. B. Shaffer and twenty-two other citizens asking that sections twenty-five (25), twenty-six (26), thirty-five (35), thirty-six (36) and the east three-quarters (¾) of section thirty-four (34) be included in the proposed new district; also a petition from A. J. Blankenship and five others asking that the remainder of section thirty-four (34) and section twenty-seven (27), less the northwest quarter (¼) of the northwest quarter (¼), together with the southeast quarter (¼) of the southeast quarter (¼) of section twenty-two (22) be included in the Independent District of Belknap. B. B. Shaffer and P. H. Burns presented an amendment to the original Shaffer petition asking that it be amended by striking out the north one-half (½) of section twenty-five (25). The record however fails to show that the amendment was filed with the board of directors.

With these petitions before it, what was the duty of the board?

We regard the construction of section 2794 so important that it was submitted to Hon. Milton Remley, attorney-general, for his opinion. He says in part: "The language of the section relating to the duties of the board is as follows: 'Such board shall establish the boundaries of a proposed independent district, including therein all of the city, town or village, and also such contiguous territory as is authorized by a written petition of a majority of the resident electors of the contiguous territory proposed to be included in said district in not smaller subdivisions than entire forties of land in the same or

in an adjoining school township, as may best subserve the convenience of the people for school purposes, and shall give the same notices of a meeting as is required in other cases.

"The board of directors of the school township is elected by the people of the entire township. They may have interests antagonistic to the formation of an independent district. There seems to be but little left to the discretion of the board. They are required to include therein all of the contiguous territory proposed to be included in said district in not smaller subdivisions than forty acres of land. It seems to be obligatory upon them to include the territory petitioned for, except where the proposed boundary line would divide forty acres of land, according to the government survey. They might, however, in case the convenience of the people of some subdistrict left out of the proposed independent district demanded it, include more territory than was described in the petition. The circumstances might be such that a few families, after the proposed independent district was carved out of the school township, would be practically left without school privileges. The law seems to require, in fixing the boundaries, that all of the contiguous territory petitioned for shall be included, but does not even inferentially prevent the board of directors, in fixing the boundaries, from including some not petitioned for.

"I think the statute is mandatory, requiring the boundaries to be established by the directors, which boundaries shall include all territory petitioned for, and as much more as the judgment of the board of directors shall deem necessary to subserve the convenience of the people for school purposes. It is also mandatory upon the board to give notice of the meeting at which the people may vote."

To the question, "In case an appeal is taken to the county superintendent from the action of the board in refusing to establish boundaries, should the county superintendent consider both the convenience of the people and the petition presented by the majority of the electors, or is he limited to the petition alone?"

His reply is: "He can exercise no power not given by statute to the board of directors, and can make such order as the board of directors should have made. In adding any territory not embraced within the petition he should certainly consider the convenience of the people, both in the proposed independent district, and also the convenience of any who are left in a school township; but like the board of the district township, he would not be authorized to omit any of the territory included within the petition from the proposed independent district. He is not, however, limited any more than the board would be by the petition in regard to adding to the proposed independent district land not included in the petition."

Since it is the duty of the board and the superintendent, in case of appeal, to include in the proposed district at least all of the contiguous territory petitioned for, it only remains for us to do likewise. Our opinion is not final, however. The voters themselves are to determine whether or not they desire a separate organization. A careful consideration of the facts in the case leads us to the opinion that the formation of the independent district of Belknap is desirable; that it will accommodate well a large number of children. At no distant day a graded school will be provided, and with modern equipment and trained teachers, pupils will enjoy advantages superior to those now granted them.

In harmony with the petitions of the electors, and the ruling of the attorney-general, it is therefore ordered that the independent district of Belknap be constituted to contain sections twenty-five (25), twenty-six (26), twenty-seven (27), less the northwest quarter (¼) of the northwest quarter (¼) thirty-four (34), thirty-five (35), thirty-eight (38), and the southeast quarter (¼) of the southeast quarter (¼) of section twenty-two (22) of Soap Creek township. It is further ordered that in accordance with section 2794 the board shall take the necessary steps to provide for the holding of an election. The same to be held before November 1, 1898. REVERSED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, Iowa, October 1, 1898.

J. L. MUNN v. SCHOOL TOWNSHIP OF SOAP CREEK.

Appeal from Davis County.

APPLICATION FOR REHEARING.

NEW QUESTIONS. Questions not raised at the hearing before the county superintendent nor before the superintendent of public instruction at the time the appeal was heard by him can not be considered for the first time on an application for a rehearing.

REHEARING. The application for a rehearing will be denied unless sufficient reasons have been presented warranting a change in the former opinion.

Application for a rehearing in the above entitled case is now made by the appellee, the district township of Washington, on the ground that "this case does not decide whether or not an appeal lies where a board fails to take action." A review of the case shows that the board did act. It declined to establish the boundaries of the proposed independent district of Belknap. We do not understand that counsel contends otherwise.

Affidavit of appellant Munn, made in taking appeal from the decision of the board, says: "The school board of said school township rendered a decision refusing to grant the *petitions* of residents of Belknap and *contiguous territory*." Again, quoting from affidavit: "Said board erred in that they have no legal discretion in the matter, and should have granted the independent district as asked for by said *petitions*."

Attorney for appellee argues that only the single petition from the village of Belknap was refused and that others from contiguous territory are now before the board and may be called up and passed upon at any meeting. This point was presented both orally and in written argument by counsel, and was given due consideration before announcing former decision.

In the case of *Johnson v. School Township of Utica*, appeal from Chickasaw county, the board had before it at its September meeting a petition requesting the formation of a new subdistrict. Without action the board adjourned to consider the petition the following February. At the trial before the county superintendent motion was made to dismiss the case on the ground that the petition was still before the board. The motion was overruled by the county super-

*For decision of the Supreme Court in this case see 110 Iowa, 652.

intendent. On appeal, this department, we think, rightly sustained the lower tribunal.

In the case before us no action of the board could have barred more effectually the formation of the independent district. That petitions from contiguous territory were before the board has not been questioned.

Our attention is again called to the time in which the organization of the independent district may be completed. No sufficient reason has been presented to warrant us in changing our opinion in regard to this point.

The other question, whether or not the village of Belknap has sufficient population, was not raised at the hearing before the county superintendent nor this department and may not be considered now.

The foregoing review disposes of the material points involved in the motion for rehearing.

This department might have reversed the decision of the county superintendent and remanded the case to the board with instructions to establish the boundaries of the proposed district in accordance with the opinion of the attorney-general. Had this been done the only course for the board to pursue would have been to fix the boundaries of the district including all contiguous territory petitioned for. The course adopted appeared to be the more speedy and for that reason was chosen.

As previously stated, our decision is not final. The law wisely leaves the final settlement covering the formation of districts, in such cases as this, to the voters themselves. If those residing upon the outside territory proposed to be included, desire to vote separately on the proposition, they may do so. Should a majority of the votes cast on such outside territory be against the proposed district, it shall not be formed.

The application for rehearing is DENIED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, Iowa, October 18, 1898.

O. F. HALE v. SCHOOL TOWNSHIP OF RIVERDALE.

Appeal from Kossuth County.

APPEALS. Should be conducted with fairness and impartiality.

TIME OF HEARING. If the county superintendent can not hear testimony for both parties at the time set for such hearing, he should give the parties ample time later to make a clear and full presentation of their cause.

At a special meeting of the board of directors, held September 30, 1898, it was voted to change the schoolhouse in subdistrict number one, from the present site to a point one mile west. From the decision rendered, O. F. Hale appealed to the county superintendent, who affirmed the board's action.

In appealing to the superintendent of public instruction, appellant alleges errors as follows:

1st. He, the county superintendent, failed to take into consideration the geographical position, number and convenience, of the scholars and residents of the subdistricts, as required by section 2773, Code of 1897.

2d. That the trial being set for 1 P. M. on October 27th, he failed to appear

until about 4 P. M., and then conducted the trial in such haste and evident impatience as to embarrass appellant whose witnesses had returned to their homes before the superintendent's arrival, and thus prevented him from fully presenting his case.

3d. That he refused to allow your appellant to argue his case and adjourned the trial without affording appellant an opportunity to fully present his case.

It is due all parties in controversy that appeals be conducted with impartiality. The law expressly declares that notice of the time and place of hearing appeals shall be sent in writing by the county superintendent to all parties adversely interested. It is expected that the utmost fairness will be shown.

A failure on the part of the county superintendent to appear at the appointed hour set for hearing the case is not an error of great consequence, provided ample time is given all parties to make a clear and complete presentation of their cause.

We find no denial of errors charged and are disposed to remand the case to the county superintendent with the suggestion that he fix a time in the near future for hearing the case anew, and give notification to interested parties as provided by statute.

Having heard the testimony, and considered the geographical position, number and convenience of the pupils, he shall then make such decision as may appear just and equitable.

REMANDED.

RICHARD C. BARRETT,

February 3, 1899. *Superintendent of Public Instruction.*

IRVING J. JOHNSTON v. INDEPENDENT DISTRICT OF SANBORN.

Appeal from O'Brien County.

RESTORATION OF TERRITORY. The refusal of a board of directors of an independent district to concur in the restoration of certain territory may not be reversed except when clearly shown that such refusal was an abuse of discretion.

COUNTY ATTORNEY. It is not only wise but in conformity with law for the county superintendent to consult the county attorney before deciding an appeal.

The proceedings in this case are founded upon section 2792 of the code of 1897 and is brought to have several sections of land now included in the Independent District of Sanborn restored to the school township of Summit, to which they geographically belong.

The section to which reference is made above provides that territory so situated may be restored by the concurrent action of the boards of directors, and shall be so restored upon petition of two-thirds of the electors residing upon the territory proposed to be set off, provided the school corporation that is to receive back the territory and the county superintendent concur.

The transcript forwarded in this case is very complete. It shows that a petition signed by two-thirds of the electors was presented to the board of directors of the school township of Summit and the territory accepted. For some reason not apparent, it was not then presented to the county superintendent, but was laid before the board of directors of the Independent District of Sanborn. Said board failing to act, an action was brought at the May term of the district

court in 1898 to compel action. In response to the court's order the board met and considered the petition on the eighteenth of June and rejected the same.

From the decision of the board Irving J. Johnston *et al.* appealed to the county superintendent, who affirmed the order of the board, and said parties now appeal to the superintendent of public instruction.

In all cases of appeal the county superintendent is charged to make such decision as may be just and equitable. It is alleged that the decision rendered is not that of the county superintendent, but one given by the county attorney. We can not concur in the view taken by counsel for appellants. It is not denied, however, that the county attorney did submit to the county superintendent an opinion. In fact, the complete opinion of the county attorney is made a part of the transcript. Having heard the evidence, we think she acted wisely and in conformity with law in requesting the county attorney for the correct interpretation of the law relating to the issues, before deciding the appeal.

It is also alleged that the county superintendent erred in refusing to concur with the board of directors of the school township of Summit as provided in section 2792. A careful reading of the transcript convinces us that the appeal is not, in this instance, from the action of the county superintendent in refusing to concur, but from her decision in affirming the order of the board of directors in rejecting appellant's petition.

The question to be determined then is whether the board of directors of the Independent District of Sanborn in refusing to concur in the restoration of territory abused its discretion or violated law. The latter is not claimed.

It is contended that the restoration of the territory is desired in order that additional school facilities may be provided for the children of the school township of Summit. Such motives are commendable. Doubtless, the refusal to consent to the transfer of territory is, in part, for the reason that better school facilities are provided appellants by the board of directors in the Independent District of Sanborn.

As a part of the Independent District of Sanborn those residing upon the territory in question enjoy several advantages. Among them is that of attending a well graded school in which is taught not only the common school branches, but the advanced studies as well. Again, if territory is detached it becomes necessary for pupils to travel from the town while now not infrequently conveyances in the regular order of business carry children both to and from school. That these advantages are appreciated is evidenced by the remonstrance signed by all but one of the present electors having children of school age, and presented to the board of directors of the Independent School District of Sanborn prior to its action on the eighteenth of June.

If pupils of the school township of Summit are not enjoying school facilities such as are most profitable and the board is desirous of securing increased advantages it may arrange with any person outside the board for their transportation to and from school in the same or in another corporation. Expense incurred for such services may be paid from the contingent fund.

Having carefully considered all of the facts and circumstances entering into

the merits of the case, we can find no reason to warrant us in disturbing the decision of the county superintendent or setting aside the action of the board.

AFFIRMED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, Iowa, February 8, 1899.

E. F. BACON v. THE INDEPENDENT DISTRICT OF WEST DES MOINES.

Appeal from Polk County.

EXPULSION OF PUPILS. Pupils may be expelled by the board for immorality, violation of the regulations and rules established by the board, or when their presence is detrimental to the best interests of the school.

JURISDICTION. The board of directors of a school corporation have no jurisdiction over children after the termination of the school year.

EXISTING SCHOOL. The order expelling a scholar must be from an existing school. The scholar's relationship with the school is severed when the school year has closed and vacation has begun.

The facts presented for consideration in this case show that on the third day of June, 1898, the superintendent of the West Des Moines city schools, in accordance with the provisions of section 2782 of the Code, notified the president of the board of directors of the suspension of certain pupils, among them Julius Bacon, son of the appellant, for acts of disorder, insubordination, and for conduct detrimental to the best interests of the school. On the sixth day of June the board of directors met in regular session and was addressed by the appellant in behalf of his son. Several of the suspended pupils present also spoke, acknowledged their wrong and asked for reinstatement. Julius Bacon acknowledged his error, but pleaded extenuating circumstances. The board then adjourned without action until June 13th, a week after the close of the school year, at which time Bacon was expelled for one year from June 3, 1898, and the others from four to seven months. From the action of the board E. F. Bacon appealed to the county superintendent, who heard the case in regular form and affirmed the action of the board. Appellant now appeals to the superintendent of public instruction.

The law provides that the board of directors may expel any scholar from school; first, for immorality; second, for violation of rules; third, when the presence of the scholar is detrimental to the best interests of the school.

To warrant the board in exercising its expulsive power it is not necessary that the scholar be a corrupter of youth, or a flagrant, or a persistent violator of the established rules. It may, if occasion requires, summarily expel a pupil whose presence is considered harmful to the best welfare of the school.

To deprive a pupil of school privileges, however, is an act of so much consequence that it should be decided upon only after all the circumstances entering into the case have been thoughtfully weighed.

The provision authorizing boards to expel when the presence of any scholar is harmful is a recent enactment. Formerly courts held that pupils could be expelled from school only as a punishment for breach of discipline or for offenses against good morals.

Instances have arisen where pupils intellectually the superior of their associates and possessed of high ideals in many respects have, without displaying a spirit of insubordination themselves or openly disregarding the expressed wishes of those placed over them, become leaders and incited others to open revolt against the school authorities. Recognizing the weakness of the former provisions of law to deal with such cases, the general assembly in revising the code inserted the third division above given in order that boards could protect the interests intrusted to them. While the provision is an excellent one, the power conferred by it should always be exercised with great care and within proper and legal limits.

Several questions are presented to us for consideration by counsel for appellant. In view of the construction we feel obliged to put upon section 2782 it is only necessary to determine the question: Has the board of directors of a school corporation jurisdiction over children after the termination of a school year, as determined by the board of directors?

We are unable to find that this question has ever been determined by the supreme court of our state; hence to a certain extent reliance is placed upon the holdings of the judicial tribunals in other states. In a Nebraska case given in 48 Northwestern Reporter we find that an attempt was made to show that the board was justified in expelling a pupil because of an alleged insubordination. In answer to the allegation the court said: "But the charge even if true relates to her conduct during a former term of school. We need not determine therefore whether the testimony sustains that charge or not." Here the court declined to consider alleged charges of insubordination because they were committed at a *term* of school having previously closed.

The statute says that the board of directors have power to "expel any scholar from school." This language evidently means that before a board of directors may issue a valid order expelling a scholar from school, there must be an *existing* school and also a *scholar* to be expelled therefrom.

The transcript shows that all school exercises for the year had closed, contracts had expired and teachers were released.

While boards of directors are charged with the making of rules for the government of schools, we are not disposed to hold that the law authorizes them to exercise control over teachers and pupils during vacation. Notwithstanding the fact that the board in this case ordered one pupil expelled for four months, three of which are for the vacation months of June, July and August, we are not fully satisfied that the board claims such authority or wishes to be charged with the responsibility. If such is the view taken, however, it can not be sustained.

Julius Bacon had been a scholar the past year, but the relationship was severed at the time of the board's action. There is nothing to indicate that he would present himself and claim school privileges at the opening of the next year.

We are always gratified when we can affirm the decision of a county superintendent who has sustained a discretionary act of a board. A statement of fact such as was in this case presented to the county superintendent for his consideration would warrant an affirmance of a board's action in expelling a pupil for a reasonable time, if jurisdiction were not questioned.

Inasmuch as there was no school and consequently no scholars we can only find that Julius Bacon was not subject to the authority of the board of directors

of the school corporation of West Des Moines and could not therefore be expelled.

The decision of the county superintendent is REVERSED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, Iowa, March 18, 1899.

E. F. BACON v. INDEPENDENT SCHOOL DISTRICT OF WEST DES MOINES.

Appeal from Polk County.

APPLICATION FOR REHEARING.

ORAL ARGUMENT. The failure of counsel for appellee to present oral argument, after being informed of the hearing, will not justify a reopening of the case.

REHEARING. To warrant the superintendent of public instruction in granting a rehearing it must be shown that some very serious error has been made.

The attorney for the appellee comes now and asks for a rehearing in the above cause for the reason "that the sole question considered by the state superintendent was one upon which this appellee was not heard in oral argument before him."

For many years it has been the custom of the department of public instruction in hearing appeal cases to notify interested parties. The office record shows that both appellant and counsel for appellee were notified of the time set for final hearing. The failure of counsel for appellee to present oral argument after being duly informed of the hearing will not justify the department in reopening the case.

It is somewhat doubtful whether under the law a rehearing is contemplated or possible. An examination of the statute fails to reveal any direct provision authorizing the same, while section 2820 relating to appeals to the superintendent of public instruction says: "The decision when made shall be final." Doubtless, upon being convinced that a decision rendered was erroneous, either the county superintendent or superintendent of public instruction might recall the same and reverse or modify former holdings. To warrant either of these officers in reopening a case, it must be shown that some very serious error has been made, or that some additional testimony has been discovered which could not have been presented at the former hearing by using reasonable diligence. See case of *Mary Grey v. Independent District of Boyle*, S. L. 1897.

In response to the application for a rehearing a willingness to receive and consider a written argument which counsel for appellee might submit touching the point determined in our former decision was expressed by the superintendent of public instruction. Before rendering our decision of March 18, 1899, all of the material points suggested were fully and carefully considered. Since the receipt of counsel's argument we have reviewed the case and read with care the cases cited, and believe that nothing would be accomplished by a rehearing.

The application is DENIED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, Iowa, June 1, 1899.

W. H. MESSNER AND FOSTER RIGLER v. THE SCHOOL TOWNSHIP OF BEAR GROVE.

Appeal from Guthrie County.

BOND FOR COSTS. The law does not require the filing of a bond for costs or the giving of security therefor as a condition necessary to perfect an appeal.

EXPENSE OF APPEALS. It is the evident intent of the law to make it possible for aggrieved parties to have a hearing with the least possible delay and annoyance, and at the lowest expense.

This case arises from the action of the board of directors of the school township of Bear Grove to redistrict the same.

From the board's action the appellants appealed to the county superintendent. In accordance with the statute the secretary of the board of directors filed a transcript of the board's proceedings March 15th. On the twenty-second of March the county superintendent notified appellants that the appeal was not perfected, and that unless bonds for the costs were executed, filed and approved within twenty days from the date of notice the appeal would be dismissed and the action of the board of directors affirmed. On the eleventh of April, the appellants having failed to comply with the order of the county superintendent the appeal was dismissed and the order of the board redistricting the township affirmed. From this order appeal is now taken to this department.

Appellants appeal from the ruling of the county superintendent in dismissing the appeal case, affirming the action of the board, and in requiring them to give bonds for costs:

1. Because the county superintendent erred in requiring appellants to give bond for costs.

2. Because said ruling and action is, in fact, a denial of justice, in that it prevents appellants from having a trial and hearing as provided by law.

An examination of the law relating to the taking of appeals from the action of a board of directors to the county superintendent fails to show any requirement demanding a bond for costs from any of the parties in controversy. So far as we are able to learn, the only reference to costs in cases appealed to the county superintendent, is that contained in section 2821, which reads: "But if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record and tax all costs to the party responsible therefor."

The general provisions of law touching the question of costs are in no sense applicable to cases of appeal to the county superintendent or the department of public instruction. On the contrary, the law provides that any person aggrieved by any order or decision of the board of directors may appeal therefrom to the county superintendent, and the basis of the proceedings shall be an affidavit filed with the county superintendent, within the time for taking the appeal. Nowhere can we find that the county superintendent is authorized to establish a different basis such as the giving of bonds for the security of costs. The evident intent of the law relating to appeals appears to be to make it possible for aggrieved parties to have a hearing with the least possible delay and annoyance and at the lowest expense.

Believing that the law does not require the filing of a bond for costs or the giving of security therefor as a condition necessary to perfect an appeal taken from the action of the board of directors, the decision of the county superintendent is reversed and the case is remanded with instructions to fix an early date for hearing the same upon merit. REVERSED AND REMANDED.

RICHARD C. BARRETT,

June 26, 1899. *Superintendent of Public Instruction.*

NORA OELKE v. R. C. SPENCER, COUNTY SUPERINTENDENT.

Appeal from Audubon County.

GOOD MORAL CHARACTER. The county superintendent should require proof that the applicant for a certificate possesses good moral character, unless he has personal knowledge of the same.

REFUSAL OF CERTIFICATE. Good moral character being one of the essential qualifications of a teacher, the county superintendent is fully justified in refusing a certificate to an applicant who fails to furnish satisfactory evidence of such character.

NORMAL INSTITUTE. The county superintendent may refuse to enroll such persons as members of the normal institute as he has reason to believe are morally deficient.

COUNTY SUPERINTENDENT. Has large discretionary power in the matter of issuing or withholding certificates, and his decision will not be reversed unless it is clearly shown that he was prompted by prejudice or ill-will, or acted with manifest injustice.

This case arises from the refusal of the county superintendent to grant Nora Oelke a certificate to teach in the public schools, and to enroll her as a member of the normal institute.

A hearing was had on the twenty-third and twenty-fourth days of August, 1899, before the superintendent, who affirmed his former decision. Nora Oelke appeals.

The law vests in the county superintendent large discretionary powers in the matter of issuing certificates. He must be fully satisfied that the applicant possesses scholarship, teaching ability, and good moral character. Of the last named qualification the law makes it his duty to require proof, unless he has personal knowledge of the same.

Too great stress can not be laid upon the value of character in the schoolroom. The teacher's character and public conduct should be without reproach. Section 2737 of the Code contemplates that the county superintendent, among other things, should find as a fact and so certify that the person to whom authority to teach is granted is of good moral character.

The county superintendent, being charged with this grave responsibility, is presumed to exercise his discretion justly and impartially. Not only is he the sole judge of the qualifications of those who desire to teach, but also of how fully he will give the applicant reasons for the refusal of a certificate. *Walker v. Crawford*, p. 42, S. L. Decisions, 1897.

There is no evidence in this case that the action of the county superintendent

was prompted by prejudice or ill will. He privately cautioned the appellant, as well as her father, against certain indiscretions upon her part which had become a matter of public gossip, without receiving any satisfactory explanation.

The superintendent, being a near neighbor to the appellant, formed his judgment as to her fitness to teach in a measure from personal observation of her conduct. Although represented by counsel at the hearing before the county superintendent, the evidence offered in her behalf is very meager. So far as the record shows, no evidence whatever was offered to show that she is of good moral character.

The refusal of the county superintendent to permit appellant to enroll as a member of the normal institute, is also assigned as error.

Under the law the county superintendent has general charge and control of the normal institute. As its head he not only possesses the legal right, but in our opinion it becomes his duty to exclude from its membership persons who are intellectually or morally unfit to attend. Most educational institutions require testimonials as to character before students are admitted. This rule is a reasonable one, and the head of a college or normal institute would be justified in refusing to enroll such students as he has reason to believe are morally deficient.

Under the law we are compelled to give due weight to the acts of the county superintendent. His decision should not be reversed unless it is clearly shown that he violated the law, abused his discretion, or acted with manifest injustice. The evidence fails to disclose that such showing has been made.

The decision of the county superintendent is therefore AFFIRMED.

RICHARD C. BARRETT,

Des Moines, December 15, 1899. *Superintendent of Public Instruction.*

J. M. SUTTON v. THE INDEPENDENT DISTRICT OF SHELBY.

Appeal from Shelby County.

LOCATION OF SCHOOLHOUSE SITE. In the location of a schoolhouse site the board is justified in considering the wishes of a majority of the people as indicated in the vote upon the issuance of bonds.

EXPENDITURE OF MONEY. Where money is voted by the electors for a specific purpose, or where they couple certain directions with their vote when authorizing the expenditure of money, such directions or vote may not be disregarded by the board.

The board of directors, being about to erect a new building to be used for high school purposes, were petitioned to locate the same at a point east of the railroad track. From their action in refusing to grant the prayer of said petition, the plaintiff appealed to the county superintendent, who, on the twenty-first day of September, 1899, affirmed the action of the board. From that decision appeal is taken to this department.

It appears from the evidence that in March, 1899, the electors of the Independent District of Shelby voted to authorize the board to issue bonds in the sum of six thousand dollars, "for the purpose of erecting an additional school building, the same to be built of brick, and purchasing a steam heating plant and placing it therein and in the present building in said district, in such a

manner as that both the new and the present school building shall be heated thereby." It being subsequently found that the amount first voted would be insufficient, the electors on the third day of August voted an additional three thousand dollars upon the same condition as the first issue was voted.

We are unable to find that the board abused its discretion or violated law in rendering the decision complained of. The members of the board were evidently desirous of carrying out the wishes of the people as indicated in the vote upon the issuance of bonds. To our mind it is quite clear that the electors authorized the issuance of bonds with the understanding that the new building should be erected in close proximity to the present one. Any other theory renders the clause, "and placing a steam heating plant therein and in the present school building in such a manner as that both the new and the present buildings shall be heated thereby," practically meaningless.

This department, as well as the supreme court of our state, has held that where money is voted for a specific purpose, or where the electors couple certain directions with their vote when authorizing the expenditure of money, such directions or vote can not be disregarded.

The decision of the county superintendent is AFFIRMED.

RICHARD C. BARRETT,

Des Moines, December 14, 1899. *Superintendent of Public Instruction.*

J. E. RUSH *et al.* v. SCHOOL TOWNSHIP OF FRANKLIN.

Appeal from Allamakee County.

APPEAL. An appeal may be taken from the decision of the board to place a petition on the table.

In this case the appellants presented the following petition to the board of directors of the school township of Franklin at the regular meeting of the board of directors in September:

"We, the undersigned citizens and residents of Franklin, in Allamakee county, Iowa, respectfully represent that they are without school advantages by reason of being so far from a schoolhouse that during the winter season nearly all of the small children in our neighborhood have to remain at home.

"That there is a sufficient number of school children of school age in our neighborhood to form a school if a school building could be placed near the section corners of sections 2, 3, 10 and 11.

"We therefore respectfully ask that you take such action as will secure the location and erection of a school building at the corners of the sections above named and provide for a school to be held at that point."

The certified copy of the transcript of the proceedings of the board shows that "after much discussion it was decided to place the petition on the table until the next meeting of the board." From his decision J. E. Rush *et al.* appealed to the county superintendent. At the hearing before this officer a motion to dismiss the appeal was filed on the following ground, to-wit:

"That there is in the record no grounds shown for an appeal in this—that the action complained of was simply a motion to lay the petition on the table—a matter from which no appeal can be taken."

Two other counts are assigned, but are not of importance in the determination of this appeal.

The county superintendent sustained the motion for the reason "that the action was not appealable," and dismissed the case. J. E. Rush and W. T. Roderick appeal to this department.

The main contention is: May appeal be taken from the decision to place the petition on the table.

In the case of *Rogness v. District Township of Glenwood*, appeal from Winneshiek county, this department held that the right of appeal from the vote of a board to lay a petition on the table can not be questioned, but like any other action must be regarded as subject to appeal.

In this opinion we find ourselves in accord. To hold otherwise under conditions such as are alleged to exist in this case would, we think, work great injury. The purpose of the board in laying the petition on the table is not apparent, but no other action upon their part could have more effectually prevented petitioners from obtaining relief. To sustain the decision of the county superintendent would, we think, at least be to encourage boards of directors in employing dilatory tactics instead of business methods in the transaction of educational affairs.

The law prescribes that boards of directors shall hold semi-annual meetings in September and March. By section 2801 authority is conferred upon boards of directors to divide the school township into subdistricts such as justice, equity, and the interests of the people require. This provision in the case of *Donelon v. The District Township of Kniest*, was held to mean that changes in boundaries of subdistricts could only be made at the regular September meeting or one called for that purpose before the following March.

The order of the board was that the petition be laid on the table "until the next meeting of the board," but the records fail to show that any time was fixed for the meeting.

It may be said that a special meeting could be called at any time. This is true, but the fact that no such meeting was held up to the time of hearing the appeal before the county superintendent on the nineteenth of December, and the further fact that appellees are now strenuously seeking to have this department affirm the decision, is presumptive that the board had no intention of considering the interests of petitioners, prior to the annual meeting in March if at all.

In view of the above we think the case should be heard upon its merits by the county superintendent. It is therefore ordered that he fix a time, giving due and proper notice to interested parties, and after hearing testimony for either party, render such decision as may be just and equitable.

REVERSED AND REMANDED.

RICHARD C. BARRETT,

Des Moines, Iowa, March 27, 1900. *Superintendent of Public Instruction.*

A. J. JONES v. INDEPENDENT DISTRICT OF OCHEYEDAN.

Appeal from Osceola County.

DISMISSAL OF TEACHER. The board may not dismiss a teacher for refusing to teach grades or classes other than those named in the contract.

SPECIAL MEETING. A teacher may not be discharged at a special meeting called for the purpose of securing modification of his contract.

CONTRACT. A refusal of the teacher to agree to a change in a legal contract with the board is no ground for discharge.

On March 23, 1899, the appellant entered into a written contract in the usual form by the terms of which he was to "teach the high school and superintend the public school" in the Independent District of Ocheyedan for the term of twenty-four weeks, commencing in September, 1899, and was to receive for such service the sum of seventy-five dollars per school month.

On September 11, the opening day of the term, the board of directors at a special meeting convened at the schoolhouse passed the following resolution:

"WHEREAS, The principal, A. J. Jones, has refused to accede to the request of the board in regard to the eighth grade being advanced to the high school room, he is hereby dismissed as principal and superintendent of the Ocheyedan public schools from this date, and his contract is hereby annulled."

From the order of the board appeal was taken to the county superintendent, who affirmed the action of the board, and the appellant now seeks relief in this department.

Appellant asks a reversal chiefly on two grounds, viz.:

(1) That the eighth grade was no part of the high school and for that reason it was no part of his duty to teach it.

(2) That he was not accorded that full and fair investigation contemplated by the law as set forth in section 2782.

These two points will be considered in the order presented.

1. We find from the transcript that at a meeting of the board of directors, held October 10, 1898, the appellant was requested to prepare a three years' course of study for the high school, and also a set of rules and regulations for the government of the schools.

Appellees earnestly contend that the power to prescribe a course of study and rules and regulations, rests with the board, and that in the absence of delegated authority to re-delegate such power, no power exists to thus delegate, and any attempt to do so is void. This question we need not determine, as no action of the board shows that it attempted to delegate any authority to appellant.

A reasonable construction of the board's action providing that the principal prepare a course of study, is that he might make such course as would in his judgment meet the needs of the schools under his supervision, and submit his report to the board for approval, modification or rejection. This method is that usually adopted by boards, and the principle has indirectly been approved by the supreme court. (*Hall v. Ind. District Aplington*, 82 Iowa, 686).

At a special meeting of the board on October 15, 1898, the course prepared by appellant, together with rules and regulations, was adopted, and according to the testimony of Mr. Underhill was, so far as completed, printed by him on the order of the board in November following. It must, we think, be conceded that the board adopted the course of study with suitable regulations. We are led to this conclusion by the further fact that the board on September 11, 1899, voted to rescind the action of October 15, 1898, in reference to the course of study. The query naturally arises, why this action if no course were adopted?

The contract entered into by the board with appellant was made in March following the adoption of the course, and, as above stated, provided that he should teach the high school, which, according to the classification adopted October 15th, consisted of the ninth, tenth and eleventh grades.

Did the board have the right to dismiss appellant for refusing to teach grades or classes other than those named in the contract? We think not. To answer affirmatively would be equivalent to stating that boards of directors have abrogative power relating to contracts with teachers. To allow them to repudiate contracts and force other parties to perform duties not agreed upon would, we think, be to encourage a breach of contract and a breach of faith.

If a board has a right to modify, without consent, a contract to the extent of requiring a principal to teach an eighth grade not contemplated when the contract was made, there would appear to be no limit; and a hostile board could demand that a teacher under contract to give instruction in high school branches should teach primary pupils, or *vice versa;* and upon failure to execute in a satisfactory manner the demands of the board, discharge him for incompetency.

2. This case differs from that usually presented. There are no charges of incompetency, inattention to duty, partiality, or immorality. The testimony and the record show that appellant began his school September 11th at the usual hour of opening.

The board of directors met on the afternoon of September 11th and after rescinding the action of October 15th, 1898, whereby a course of study was adopted, "adjourned to meet at the schoolhouse at once." Here the appellant was discharged, as stated in the resolution above given.

Was the meeting such as the law contemplates shall be held in cases of this kind? The law wisely provides that a teacher may only be discharged after an impartial trial held for that purpose. In all the testimony, there is no disagreement as to the purpose of the meeting. It was for the purpose of getting the appellant to modify the contract by accepting the eighth grade, and not for the purpose of discharging him. He was called into the presence of the board and informed of its purpose.

Appellant stated in his reply, which was written, and which he was asked to give at once, that he was ready to fulfill his contract; that if the board had rescinded its action in regard to a course of study he would like to know what the course of study for the high school should be, and the duties of the superintendent under the same. He expressed a willingness also to teach even the eighth grade for a reasonable amount of additional salary.

In view of this expressed willingness of appellant to do that which seems reasonable, we are unable to justify the action of the board. We think a compromise might well have been attempted, and proven at least reasonably satisfactory to both parties. The whole case has been given most earnest attention, and we can not find that appellant was discharged for good and sufficient cause, after that impartial investigation contemplated. His dismissal under all the circumstances revealed by the record can not be approved. REVERSED.

RICHARD C. BARRETT,

Des Moines, Iowa, May 12, 1900. *Superintendent of Public Instruction.*

J. W. LYTLE v. SCHOOL TOWNSHIP OF WASHINGTON.

Appeal from Story County.

INDEPENDENT DISTRICT BOUNDARIES. It is mandatory upon the board of a school township to include in a proposed independent district all of the territory within the corporate limits of the town.

INCORPORATED TOWN. In the formation of an independent district under section 2794 of the Code, all the town must be included in the proposed district, notwithstanding the fact that said town was formerly located partly in a school township and partly in a rural independent district.

BOUNDARIES. The extension of the boundaries of a municipal corporation extends the boundaries of the independent district of said municipal corporation.

On February 17, 1900, at a special meeting of the board of directors of the school township of Washington there was presented a petition of thirty-three citizens of the town of Kelley, asking the establishment of an independent district, including therein all of the incorporated town.

After discussion, the matter was deferred for a week in order that the board might more thoroughly investigate and obtain an opinion of the county superintendent, county attorney, and other unbiased counsel, if deemed necessary.

At the date fixed the board met and established the boundary lines for the new district, as requested by petitioners.

On March 6, 1900, J. W. Lytle *et al appealed* from the order of the board to the county superintendent, who reversed its action.

From the plat submitted, it is shown that the town of Kelley is situated on the township line in the townships of Washington and Palestine, and includes the following territory:

The south three-fourths of section thirty-one (31), and the south three-fourths of section thirty-two (32), west one-half of section thirty-three (33), range thirty-three (33), township twenty-four (24), in Washington township; the northwest quarter (¼), of section four (4), north one-half (½) of section five (5), and north one-half (½) of section six (6), in Palestine township, range eighty-four (84), township twenty-four (24).

The chief point in controversy is, has the board of directors of a school township authority in establishing the boundary lines of a proposed independent district to include in the new district any part of the territory of adjacent rural independent districts? Generally speaking, such territory can not be included.

Section 2794 of the code provides, however, that "upon the written petition of any ten voters of a city, town or village of over one hundred residents, to the board of the school township in which the portion of the town plat having the largest number of voters is situated, such board shall establish the boundaries of the proposed independent district, including therein all of the city, town or village."

The section clearly indicates that it is mandatory upon the board to include in the proposed district all of the territory within the corporate limits of the town, regardless of whether or not the territory in part belongs to rural independent districts. Failure to do so would, we think, be a plain violation of law.

It is true, as held by the county superintendent in his opinion, that no independent district may, in the formation of a new district, be subdivided so as to contain less than four sections of land, except in certain instances enumerated in section 2798. It is also true that "the independent district from which territory is detached shall, after the change, contain not less than four government sections of land," etc. (Section 2793.) We are of the opinion that these limitations apply to the cases set forth in the sections cited, and are not applicable when it is proposed to form an independent district containing an incorporated town, located largely in a school township, and in adjacent rural independent districts.

On March 23, 1899, in answer to the question: "Does the law as found in chapter eighty-nine (89), acts of the twenty-seventh general assembly, contemplate that 'when the corporate limits of any city or town are extended outside of the existing independent district or districts, the boundaries of said independent district or districts shall be also correspondingly extended,' without regard to township or county lines, manner of organization of the district or districts from which territory is taken, or the condition in which such district or districts will be left after the territory has been taken?" Hon. Milton Remley, attorney-general, in concluding his official opinion to the department said:

"My conclusion is that the extension of the boundaries of a municipal corporation made in the manner required by law, extends the boundaries of the independent districts of said municipal corporation, without any action on the part of the school districts or their officers, and regardless of the effect of such change upon the district from which territory is taken."

Thus it appears that while section 2794 makes it the duty of the board to include all of the territory of the city, town or village in the formation of a new independent district, chapter eighty-nine (89) provides for the enlargement of the boundaries of the independent district, whenever the corporate limits are legally extended. So broad is this provision that the extension of the boundaries of the municipal corporation, so as to include an entire district or districts, correspondingly extends the boundaries of the independent district.

Though the opinion quoted has special reference to the *extension* of the boundaries of the municipal corporation, we think the holding applicable in the case before us.

We can not find that the board violated law, abused its discretion, nor acted with prejudice or malice.

The decision of the county superintendent is, therefore REVERSED.

RICHARD C. BARRETT,

July 3, 1900. *Superintendent of Public Instruction.*

G. N. WILSON v. INDEPENDENT DISTRICT OF HITEMAN.

Appeal from Monroe County.

EXPULSION OF SCHOLAR. The board may, by a majority vote, expel any scholar from school for immorality, or for any violation of the regulations or rules established by the board.

NOTICE. The law does not require school boards to give parents or pupils notice or a chance for defense before ordering suspension or expulsion.

ACTION OF THE BOARD. Must be affirmed in the absence of showing of malice, prejudice, or violation of law.

The majority of the board of the Independent District of Hiteman expelled a son of the appellant, a pupil in room No. 3, from the school and school grounds for bad and immoral conduct. From the action of the board, appeal was taken to the county superintendent, who sustained the board, and an appeal is taken to the superintendent of public instruction.

Section 2782 provides that the board may, by a majority vote, expel any scholar from school for immorality, or for any violation of the regulations or rules established by the board; and it may also confer upon any teacher, prin-

cipal or superintendent the power temporarily to dismiss a scholar, notice of such being at once given in writing to the president of the board.

The record presented shows that the board had by Rule No. 2 conferred upon the principal the "power to suspend any pupil for repeated disobedience; for filthy or immoral habits or language, for injuring or defacing school property, or for any intentional violation of the rules." Under the authority thus conferred, the principal did, on the seventeenth day of December, 1900, notify the president of the board of the dismissal of J. Wilson, for conduct unbecoming a pupil. On the following day the board in special session sustained the order of the principal "until such time as his parents shall give assurance to the school board that he will comply with the rules of the school."

In appealing to the county superintendent, appellee alleges that said pupil was "expelled without cause and without legal notice or chance to defend." Appellant seems to have an erroneous idea regarding the power of a board to dismiss a pupil. The law does not demand that the board shall give parents or pupils notice or chance for defense before ordering suspension or expulsion. The power to expel a pupil is wholly within the discretion of the board. However, the undisputed testimony of the principal goes to show that the father of the boy was notified by a member of the board of the meeting to be held for the purpose of investigating the case.

A careful examination of the entire record submitted fails to reveal that the action of the board is in any way tainted by malice or prejudice, or that there has been a violation of law. In expelling the pupil until such time as he was willing to conduct himself properly and obey the reasonable regulations of the school, we think the board acted in a very conservative and proper manner, and that the county superintendent was justified in sustaining its action.

The decision of the county superintendent is AFFIRMED.

RICHARD C. BARRETT,

Des Moines, Iowa, May 27, 1901. *Superintendent of Public Instruction.*

H. A. TOPPING AND THOMAS WILLIAMS *v.* SCHOOL TOWNSHIP OF UNION.

Appeal from Van Buren County.

CORRECTION OF DECISION. The superintendent, in the discharge of his judicial duties, may, within a proper time, recall and correct a decision erroneously rendered.

DECISION. The county superintendent is warranted in rendering a decision based upon certain conditions.

This case arises from the action of the board of directors of the school township of Union in voting to remove the schoolhouse in subdistrict number four from its present location to a site one-half mile south and one mile west.

Upon appeal to the county superintendent, it was shown that the children from the families of appellants would be nearly or quite two and one-half miles from the schoolhouse located upon the new site. The county superintendent remanded the case to the board July 1st, with the recommendation that it make provision for the schooling of the children in adjacent districts, provided they desire to attend, "but if that is not done we will be compelled to reverse the action of the board." On July 16th a statement signed by the president and secretary pro tem. of the board of directors of Union township was filed, al-

leging that the board had made arrangements to send appellants' children to school in accordance with the decision. On the same date attorneys were notified that the action of the board was sustained. On July 23d counsel for appellants filed a statement from the board of directors of the Independent District of Winchester to the effect that "no provision has been made with the board of the school township of Union for the schooling of the children of Thomas Williams." On the following day counsel filed a motion, asking that the decision rendered July 16th be set aside, since the board had failed to carry out its provisions.

In passing upon this motion the superintendent held, that since notices had been sent to interested parties that the action of the board was sustained, the case was closed and could neither be reopened nor the decision set aside.

In this conclusion we think the superintendent unintentionally erred. In the case of *Desmond v. The Independent District of Glenwood*, 71 Iowa, page 23, the supreme court held:

"The superintendent of public instruction, in the discharge of his judicial duties, has the power to correct mistakes in rendering judgments in a case before him possessed by all courts and judicial officers. If, through mistake, he should announce a decision differing from the decision actually rendered, he possesses the power to recall such an announcement, and publish the decision correctly; or if, mistakenly, he should render a decision, he could, before rights had been acquired under it, and within a proper time, upon discovering the mistake, recall it and decide rightly." We think that the county superintendent has the same power.

By the provisions of section 2774 the board of directors has power to contract with boards of other school townships or independent districts for the instruction of children who live at an unreasonable distance from their own school; and we think the county superintendent was warranted in rendering a decision based upon certain conditions.

The case is remanded to him with the suggestion that he reopen the same, and give all parties interested the opportunity to show clearly and definitely that there has or has not been a compliance with the decision.

If such showing is not made within a reasonable time, it is recommended that he make such decision as to him appears just and equitable, after taking into consideration the geographical position, number and convenience of pupils. From the decision, any party aggrieved will have the right to appeal.

REMANDED.

RICHARD C. BARRETT,
Superintendent of Public Instruction.

Des Moines, Iowa, November 13, 1901.

F. E. HAMMER v. WILL COOK.

Appeal from Adair County.

CONSTITUTIONALITY OF LAWS. It is not the province of the county superintendent or of the superintendent of public instruction to determine the constitutionality of the law, since these officers exercise ministerial rather than judicial powers, and no appeal may be had to the supreme court.

JURISDICTION OF SUPERINTENDENT. It is the duty of the county superintendent

and of the superintendent of public instruction to give effect to the law as interpreted by the courts.

COSTS—TAXING OF. The costs in cases triable before the county superintendent should be paid by the party instituting the proceedings unless there were good and sufficient reasons for beginning the action and the allegations have been proved..

COSTS—TAXING THE CORPORATION. Under section 2821, where the county superintendent could not under her findings tax the costs to the plaintiff because there was reasonable cause for instituting the proceeding, nor to the defendant for the reason that she had to find for said defendant, she must tax them to the school corporation.

On the twelfth day of January, 1904, Mrs. Ella C. Chantry, county superintendent of Adair county, in rendering a decision in the above entitled case, taxed the costs amounting to $51.05 to the school township of Harrison. Thereupon the school township, through its attorney, filed a motion with the county superintendent to retax the costs, and on the ninth day of February, 1904, the motion was overruled. From this action of the county superintendent, the board of directors of the school township of Harrison appeals to the superintendent of public instruction.

Two questions only need be considered: First, had the county superintendent warrant in law to tax the costs to the school township; and, second, if she had such warrant, did she abuse her discretion in so taxing?

Section 2821 of the Code says:

"The county superintendent in all matters triable before him shall have power to issue subpoenas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the contingent fund of the proper school corporation, upon the certificate of the superintendent to and warrant of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and tax all costs to the party responsible therefor."

The transcript of this case shows that the plaintiff, F. E. Hammer, preferred charges against Will Cook, a teacher, and sought to secure the revocation of the certificate of said Cook. The two parties in interest were Hammer and Cook. Counsel for appellant argues that the school township "was in no way made a party to the proceedings, had no notice therein, nor any opportunity to appear, defend or prosecute said proceedings;" and that the order of the county superintendent in taxing the costs to the school township, if sustained, would deprive the school township of its property without due process of law. It is, therefore, urged that section 2821 of the Code, insofar as it attempts to confer jurisdiction to tax costs to school corporations, where such a school corporation was not a party to the proceedings, is unconstitutional, and we are asked to so declare it. This, manifestly, we can not do, since no appeal can be taken to the supreme court from a decision of the superintendent of public instruction. We are obliged to give effect to the law as it stands until the

same is annulled by the supreme court. Section 2821 plainly makes it the duty of the county superintendent to tax the costs in "all matters triable before him," either to the school corporation or to the party responsible for bringing the case.

If the county superintendent could not, under her findings, tax the costs to F. E. Hammer, she was obliged to tax the costs to the school township of Harrison, and if the constitutionality of the law under which this power was exercised is to be questioned, the school township should seek to secure an order from the district court to set aside the judgment.

But, had F. E. Hammer reasonable cause for instituting the proceedings? The county superintendent in her decision says: "I find that this proceeding was begun in good faith and that he (F. E. Hammer) had reasonable cause for filing the information." In support of this conclusion the evidence shows that the most serious allegations of the information were sustained—that the teacher had resorted to methods of punishment that can not be approved, and that in the course of a fight with two of the large boys of the school he had used obscene and indecent language. But there were extenuating circumstances, and the certificate was not revoked, the superintendent instead reprimanding the teacher for his errors.

We are of the opinion that the costs in cases triable before the county superintendent should be paid by the party instituting the proceedings, unless there is very good cause for beginning the same and the allegations are fully proved. In the case before us the allegations of the plaintiff were sustained by the evidence, and while the prosecution was, no doubt, prompted in part by malice, in the exercise of her discretionary powers conferred by section 2821 of the Code, the county superintendent refused to tax the costs to the plaintiff, F. E. Hammer. We do not find sufficient cause for reversing this decision, it being a well recognized rule of the courts that in the absence of an affirmative showing of an abuse of discretion, the presumption is that it was properly exercised. (58th Iowa, page 131.) AFFIRMED.

JOHN F. RIGGS,

Des Moines, Iowa, May 25, 1904. *Superintendent of Public Instruction.*

G. E. HANCOCK *et al.* v. SCHOOL TOWNSHIP OF FRANKLIN.

Appeal from Allamakee County.

POWER OF COMMITTEE OF A SCHOOL BOARD. A school board may not confer upon a committee authority to purchase a site, contract for the erection of a schoolhouse or perform any other duty enjoined upon the board by the law.

SCHOOL PRIVILEGES—TRANSPORTATION. While it is incumbent on the board to furnish reasonable school privileges for all the children of the township, it is often the better plan to transport pupils to existing schools than to establish additional schools.

REDISTRICTING—ENTIRE CORPORATION CONSIDERED. A school board in establishing subdistrict boundaries must consider the interests of all in the corporation.

At a regular meeting of the board of directors of the school township of Franklin, held on the twenty-first day of March, 1904, a motion was adopted by unanimous vote by which the president of the school board was empowered and

instructed to "appoint a committee of three to lease a schoolhouse site to set the No. 9 schoolhouse on. That this committee be empowered to let contract of moving schoolhouse, surveying school site, and all other work pertaining to such work, and are authorized to draw orders on the treasurer to pay for the same."

From this action of the board appeal was taken to the county superintendent, who, on June 6, 1904, rendered his decision affirming the action of the board, as set forth in the resolution, and approving the selection of the site made by the committee appointed under the resolution.

From this decision of the county superintendent G. E. Hancock *et al*, appeal to the state superintendent, and ask a reversal on two grounds:

First, that the order and proceedings of the school board were unauthorized, and

Second, that, had the action been regular, the removal of the schoolhouse to the location where the testimony shows the committee proposed to move it, would be prejudicial to the rights of appellants and the school patrons and tax payers of the township.

Section 2773 of the Code makes it the duty of the school board to "fix the site for each schoolhouse," and it has been held by this department that "the power to locate sites for schoolhouses is vested, originally, exclusively in the board."

Counsel for appellees contend that when the action of March 21st was taken it was well understood by all members of the board where the schoolhouse was to be placed. While this is altogether probable, it is not revealed in any way in the records, and there was nothing in the resolution that limited the committee in any particular. Neither is there any record to show that the committee was to report its findings back to the board for final action. In fact, the contrary is inferred, since the committee was "empowered to let contract for moving schoolhouse, surveying school site, and all other work pertaining to such work, and to draw orders on the treasurer to pay for the same."

We are of the opinion that the board clothed this committee with powers which a school board alone can exercise.

A committee of the board may properly make choice of a definite site and secure an option from the owner of same, either to lease or sell, and then report back to the full board for adoption or rejection.

The fact that the committee did make a report to the board on the eighteenth day of June,—twelve days after the county superintendent gave his decision,—does not legalize the act of the board in appointing the committee with powers which the board could not legally delegate. It was the evident intent of the board when appointing the committee that no report was expected, at least not until the entire work of surveying the site and of moving the schoolhouse should be completed. The board was further in error in authorizing a committee of its members to "draw orders on the treasurer." Section 2780 of the Code makes it the duty of the board to "audit and allow just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed."

Since the powers delegated to the committee were unauthorized by law, it follows that the work of the committee can not stand. It is thus unnecessary to enter into a full discussion of the second contention of plaintiff, viz.: That the site selected by the committee, had it in fact been regularly and legally selected, would have been an abuse of discretion and reversible error.

But since the board will have the whole question before it anew, we venture to suggest that in adjusting the subdistrict boundaries or in changing the location of one or more of the schoolhouses, careful deliberation should be had and the strict form of the law should be adhered to.

The record of the case shows that the board has for years attempted to harmonize conflicting interests and has, as we believe, sought in good faith to serve the interests of the entire township. While it is incumbent upon the board to furnish reasonable school privileges for all the children of the township, it would, in our judgment, be unwise to create a new subdistrict and establish an additional school. Last year there were but 184 pupils enrolled in the entire township of Franklin. In some of the schools of this township the enrollment is now far too small for satisfactory school work or reasonable economy in the maintenance of the school. A saner course than the establishing of an additional school would be for the board to furnish transportation for those children remote from school. Indeed, we are strongly of the opinion that some of the schools now existing could be profitably abandoned and the children carried to another school, which could easily be made a better school. We commend to the board a careful consideration of this suggestion, believing as we do that partial consolidation of school interests and transportation of pupils remote from school will solve the difficult problem with which the board has been contending for years. We venture this suggestion as one of the means of meeting a difficult situation and at the same time of increasing the enrollment and average attendance in the township.

But whatever course the board may take, the interests of the entire township must be considered and an adjustment made that will do practical justice to all. It is with the confident belief that the board will make such adjustment that the case is remanded for further consideration and action.

REVERSED AND REMANDED.

JOHN F. RIGGS,

Superintendent of Public Instruction.

Des Moines, Iowa, November 14, 1904.

A. ENGBERS *et al.* v. SCHOOL TOWNSHIP OF RICHMOND.

Appeal from Mahaska County.

RECORDS. The secretary's record should show a copy of each notice, a complete account of the transactions of all meetings of the board and of the electors, arranged in chronological order, the date of each being given, the names of the members present at each meeting of the board, and the names of those voting for and against each proposition acted upon by it.

RECORD—DEFECTIVE. A defective record may render it impossible to try a case on its merits.

ELECTION—NOTICE OF PROPOSITION. No proposition may legally come before the electors at a regular or special meeting unless ten days' notice has been given.

NOTICE—FORM OF PROPOSITION. The proposition submitted to the electors must not differ in any essential from the proposition as advertised in the notices.

VOTE OF ELECTORS—INSTRUCTIONS. When the electors vote a school house tax to erect a schoolhouse on a particular site the board is without power to erect it on a different site.

JURISDICTION OF SUPERINTENDENT. Neither the county superintendent nor the superintendent of public instruction have jurisdiction over questions arising under the voting of taxes.

The transcript in this case shows that on the sixth day of March, 1905, the electors in Subdistrict No. 10 of Richland township decided to ask that a tax be voted for the erection of a schoolhouse in said subdistrict on the old site.

At the annual meeting, held one week later, the proposition was presented to the electors, the secretary's record of the proceedings being as follows:

"No. 10, subdistrict, asked for tax to build new schoolhouse; amount, $700. They also asked for new road to schoolhouse; amount not named. Motion made to move schoolhouse site one hundred rods south and one-half mile west in subdistrict number ten from what it is now, providing the tax for schoolhouse carried."

Eighty-four ballots were cast for this motion, fifteen against, and one blank.

The school board held meetings on March 20th, April 10th, May 27th and July 22d. But the record does not show who of the members were present, although the testimony would indicate that a majority of the members were present at each meeting. It appears that no motion was made or vote taken at any one of these meetings and the secretary, so far as the transcript shows, took no minutes of what may have been informally agreed upon.

The following advertisement appeared in the New Sharon Star for four consecutive weeks, beginning with the issue of June 14, 1905:

BIDS FOR SCHOOLHOUSE.

The school board of Richland township will receive bids for the building of a new schoolhouse in Subdistrict Number 10, Richland township, Mahaska county, Iowa. Plans and specifications are now in the hands of the secretary, with whom bids may be left. Said bids will be opened July 22, 1905. The board reserves the right to reject any and all bids. MAMIE LINDSLEY, Sec.,
Peoria, Iowa.

Bids were opened and the contract awarded July 22d, and on the same date appeal was taken to the county superintendent who, after admitting an amendment to the affidavit of appeal, proceeded with the trial and rendered a decision, ordering the schoolhouse to be placed on the old site. From this decision of the county superintendent the board of directors appeal to the superintendent of public instruction.

We can not condemn too strongly the careless manner, both in transacting the business and in keeping the records in this school township. The secretary's records should show copies of all notices posted, a complete record of all business transacted at the annual meeting of electors, the date of every meeting of the board and the place held, the members present, the votes taken, and every important item of business transacted. Particularly in all matters relating to the voting of taxes and expending of public money the records should be full and explicit. But in the case at bar, with four meetings of the board held, and important questions involving the expenditure of public money determined, there is no evidence that the business transacted at any of these meetings was made a matter of record. While there is nothing in the testimony to show that the board acted in bad faith or purposely sought to deceive, the record is so incomplete that the actions from which appeal is sought to be made could not be easily located or the nature of the action clearly determined.

The transcript in the case does not give a copy of the notice of the annual

meeting (required by section 2746 of the Code), and the record is silent as to what said notice contained. This omission is unfortunate, for the whole question of the legality of the action taken by the electors and the subsequent actions of the board rests upon the contents of this notice. Section 2749 of the Code enumerates certain powers the electors may exercise when assembled at the annual meeting on the second Monday in March, among others the power to vote a schoolhouse tax for the purchase of grounds and the construction of schoolhouses. Section 2746 provides that the secretary of the board of directors shall give not less than ten days' notice of said meeting by posting notices in at least five public places in the corporation, said notices to specify "the place, day, hours during which the meeting will be in session, specifying the number of directors to be elected and the terms thereof, and such propositions as will be submitted to and determined by the voters."

In the case of *Goerdt v. Trumm*, 118 Iowa, page 207, the supreme court holds that none of the propositions enumerated under section 2749 can be legally acted upon by the electors at the annual meeting unless specific and legal notice has been given that such proposition or propositions will be submitted. In the case at bar, with the incomplete transcript, we are unable to know whether or not the action taken by the electors March 13th was legal.

The preponderance of the testimony shows that the motion voted upon was understood by the electors to combine two propositions, viz.: The location of the site and the voting of the tax. If then the notices previously posted by the secretary stated that the question of voting a tax to build on a site at or near one hundred rods south and one-half mile west of the old site would be submitted, the vote on such question locating the schoolhouse and voting the tax for its erection was legal and the board was without power to select a different site.

While the record is entirely silent as to the contents of the notice of the annual meeting posted by the secretary, it is improbable that any mention was made in such notice that a change of site was contemplated, for Mr. W. S. Lindsley, in his testimony, says: "At the annual meeting I made the suggestion that we change the schoolhouse site from where it was to one hundred rods south and a half mile west." It appears that this suggestion was made for the first time at the annual meeting, and that it had not been mentioned in the written notices posted by the secretary ten days before, and therefore could not be considered by the electors. If no notice of the site proposition was given, the fact that it was coupled with the tax proposition would invalidate the entire vote, even if legal notice as to the tax proposition had been given, the rule being that the proposition as voted upon must not differ in any essential from the proposition as advertised.

If then the electors acted within their rights in voting the tax and the location, the board was under the necessity of carrying out the instruction given. *(Rodgers v. School District of Colfax*, 100 Iowa, 317.) If, on the other hand, the action of the electors in voting the tax and the location was illegal, no tax could be legally raised and no schoolhouse could be legally constructed. In either case an appeal would not lie. If the whole procedure has been without warrant of law, as we suspect, the board may be enjoined from collecting or applying any public funds for the payment of site or construction of school building.

The county superintendent was without jurisdiction, and the case is therefore DISMISSED.

JOHN F. RIGGS,
Superintendent of Public Instruction.

Des Moines, Iowa, November 27, 1905.

ROSE BYRNE v. INDEPENDENT SCHOOL DISTRICT OF STRUBLE.

Appeal from Plymouth County.

DISMISSAL OF TEACHER—CHARGES. Charges to warrant a dismissal must be specific and sustained by evidence. Indefinite and anonymous complaints are insufficient.

DISMISSAL OF TEACHER—APPEAL—BURDEN OF PROOF. In a trial before the county superintendent on an appeal from an action of the school board dismissing a teacher the burden of proof is on the board.

On the twenty-third day of January, 1906, the board of directors of the Independent District of Struble met in special meeting to investigate certain charges preferred against Rose Byrne, a teacher in the employ of said board. At said meeting seven communications (one of them anonymous), addressed to the school board, were read. Each of these communications contained one or more complaints against defendant teacher. At said meeting Miss Byrne was represented by her attorney and filed a denial of the charges. The transcript does not show that any evidence was introduced before the board in support of the charges, but that, after hearing the complaints read and the denial by defendant teacher, a motion to dismiss Miss Byrne at once was carried, three of the four directors present voting in the affirmative. Appeal was taken, and the case coming on for hearing before the county superintendent, the action of the board was reversed and Miss Byrne ordered reinstated in her position in the Struble school, whereupon the board appealed to the superintendent of public instruction.

The case, as we view it, involves the question:

First. Can a board discharge a teacher on complaints general in character and without the introduction of evidence to fully substantiate the same?

Second. In an appeal to the county superintendent from a decision of the board in dismissing a teacher, is the burden of proof upon the board or upon the teacher?

Section 2782 of the Code provides that a teacher may be discharged for "incompetency, inattention to duty, partiality, or for any good cause."

While the boards are given large discretion and, in the trial of such cases, are not required to observe the strict forms of a court of law, it is necessary that they make thorough investigation of charges lodged; that the charges, if proven true, be of sufficient consequence to warrant a termination of the contract, and that such charges be specifically set out and clearly proven.

In the case at bar the charges were so general in character, and some of them so trivial, that full testimony from creditable witnesses would be required to convince any court of review that they were sufficient to warrant the board in dismissing the teacher. Such testimony was not given before the board. It was therefore the duty of the county superintendent upon appeal to take evi-

dence and determine the very case the board had determined. (S. L. 2819.) When the case was before the board, the burden of proof was unquestionably upon that body. The prosecution must establish the guilt of the accused, not the accused prove her innocence. If the board, without examining a witness or taking a word of testimony that would have standing in any court of law, can discharge a teacher, such board can not in the hearing before the county superintendent insist that the burden of proof is upon the teacher. While the county superintendent must give due weight to the decision of the board, and will not reverse the board except upon a clear showing of violation of law or abuse of discretion, he can not require the teacher to offer testimony in proof of her innocence when the board has introduced no testimony to prove her guilt.

The decision of the county superintendent is AFFIRMED.

JOHN F. RIGGS,
Superintendent of Public Instruction.

Des Moines, Iowa, March 27, 1906.

CLYDE FREEMAN v. D. E. BRAINARD.

Appeal from Harrison County.

REVOCATION OF CERTIFICATE—CHARGES. Defendant through defective hearing is incapacitated to properly conduct school—that he had been in the habit of going to the outbuildings to smoke—that he was indifferent and neglectful of his duties.

EVIDENCE. The evidence establishes the fact that defendant was in such a measure deaf that he could not detect by ear the disorder resulting from whispering and that he could not properly conduct classes. It was also shown that he smoked in the outbuilding. The evidence concerning other complaints was not so full, but proved carelessness and indifference.

COUNTY SUPERINTENDENT. The law makes it the duty of the county superintendent to satisfy himself of the general fitness and good moral character of every applicant for a certificate and provides that he may revoke a certificate, "for any cause which would have authorized or required a refusal to grant the same."

Clyde Freeman received a uniform county certificate of good grade July 1, 1909.

He was subsequently employed as a teacher in Harrison County.

On March 18, 1910, the county superintendent of Harrison county notified Clyde Freeman that certain complaints having been made concerning his work as a teacher, a hearing would be held on March 25, 1910, at which time he would be given opportunity to show why his certificate should not be revoked.

At the hearing, it was shown that plaintiff is in such measure deaf that he can not detect by ear the disorder resulting from whispering and that in conducting classes he must be near to and in front of the class in order to hear well.

It was also shown that he has been in the habit of going to the outhouse at recess for the purpose of smoking and that this fact was shown to the pupils.

The evidence concerning other complaints is not full, although it seems pretty well established that there has been in some measure indifference and neglect of the work of the school.

After the hearing, the county superintendent took the case under advisement and on March 26, 1910, issued an order revoking the certificate. Clyde Freeman now appeals to the superintendent of public instruction.

The law makes it the duty of the county superintendent to satisfy himself of the general fitness and good moral character of every applicant for a certificate and provides that he may revoke a certificate "for any cause which would have authorized or required a refusal to grant the same."

In the case of *Walker v. Crawford*, school law decisions, Hon. Henry Sabin says: "The discretion vested in the county superintendent by law is very large, and for this purpose, that he may guard the public schools against the intrusion of persons unworthy or unfit for the office of teacher. The department of public instruction can not release him from his responsibility, nor can it interfere with his discretionary acts except upon the clearest and most convincing proofs of violation of law, or of the influence of passion or prejudice in the performance of his official duty."

In the case before us, the evidence shows that the county superintendent had visited the school and was familiar with all the facts. Although the charge is made that he was actuated by malice, we fail to find evidence of this in the transcript.

From the facts shown we fail to find reason for reversing the decision of the county superintendent, and his order of revocation is, therefore, sustained to become effective on and after April 23rd, 1910.

AFFIRMED.

JOHN F. RIGGS,
Superintendent of Public Instruction.

W. C. ARNOLD *et al.* v. SCHOOL TOWNSHIP OF RICHLAND.

Appeal from Wapello County.

SCHOOLHOUSES. Schoolhouses must be located to accommodate all pupils and may not be in an objectionable locality.

BOARD OF DIRECTORS. School boards must provide equal school advantages to all so far as possible either by furnishing a suitable building or by transportation.

TRANSPORTATION. If the schoolhouse has been destroyed and school can not be maintained then all pupils shall be transported who live over one and one-half miles from the schoolhouse they are directed by the board to attend.

On September 18, 1909, the board of directors of the school township of Richland entered into a contract with Thomas Vanderpool for the use of a building to serve as a schoolhouse in subdistrict No. 7 for the current school year and ordered school to be held therein. From this action appeal was taken to the county superintendent who affirmed the decision of the board, and W. C. Arnold *et al.* now appeal to the superintendent of public instruction.

From a careful study of the record and of the written arguments of counsel it appears that all admit the necessity of a schoolhouse in subdistrict

No. 7. This subdistrict has been without a schoolhouse since February 16, 1908. Since that date two elections have been held in the school township and one in the subdistrict for the purpose of voting a schoolhouse tax with which to build a schoolhouse in this subdistrict, but in each case the proposition failed to receive a majority of the votes cast.

Failing in the attempt to rent a room in the subdistrict for schoolhouse purposes during the school year 1908-1909 the board provided transportation for the pupils of subdistrict No. 7 to other schools in the school township.

As the school year 1909-1910 approached, the electors having failed to provide funds with which to erect a schoolhouse in subdistrict No. 7, two courses were open to the board: First, to provide transportation for the children in this subdistrict as was done last year, or, second, rent a room and establish a school in the subdistrict. The board chose the second alternative. But it is charged that the building selected is remote from many homes in which school children reside, and that the surroundings are so objectionable as to make it undesirable for school uses. In our opinion the evidence fully sustains these charges.

The county superintendent in her opinion raises the question as to the legal right of the board to transport the pupils in this particular case, since it is evident that it will cost the township more to transport the pupils of subdistrict No. 7 and provide them school privileges in other districts than it will to maintain a school in the Vanderpool building. The law requires the board to furnish equal school privileges as nearly as may be for all the children of the school township. No subdistrict may be discriminated against. If it were possible to secure a building near the center of the subdistrict and one that would provide for the convenience and comfort of the children, it would clearly be the duty of the board to hire such building and maintain a school, rather than transport the children, unless it could be shown that by transporting the children there would be a saving of expense and they would also secure increased advantages. But in the case before us there is no building suitably located in the subdistrict that can be secured for school purposes. The fact that the board has hired a small building ten feet from a barn-yard and at one side of the subdistrict can not be offered now as the only course open since the expense is less than if provision had been made for transporting the children to other schools. Under such circumstances it is not only the legal right but the clear duty of the board to furnish transportation. Counsel for defendant rightly contends that the board is powerless to permanently settle this difficulty until funds are voted with which to build a schoolhouse in subdistrict No. 7. But until such funds are provided the board under the law must provide the children school advantages, and since no suitable building can be hired in the subdistrict transportation must be provided.

It is clear from the evidence and from the pleadings of counsel that the failure to vote a tax to rebuild the schoolhouse in subdistrict No. 7 is not due to cupidity on the part of tax-payers or to their lack of appreciation of or interest in the educational needs of the children.

The difficulty arises over a custom that seems to have prevailed in the township for the past forty-five years by which each subdistrict has voted the necessary funds for building its own schoolhouse when needed.

In our opinion the law gives no warrant for such usage, but on the other

hand clearly makes it the duty of the voters of the school township to vote necessary taxes for the purchase of grounds and the erection of schoolhouses.

Section 274 of the Code can admit of no other interpretation. Neither is there the slightest conflict between this section and section 2753 which provides that the voters of the subdistrict "may vote to raise a greater amount of schoolhouse tax than that voted by the voters of the school township." It was the evident intent of the legislature to afford the people in the subdistrict the opportunity of securing a better schoolhouse than the ordinary by voting an additional tax on the subdistrict; but it was not the intent to relieve the township of its duty to vote a sufficient sum to purchase a site and erect a building that would fairly meet the needs of the subdistrict.

Until the electors of the township vote the required tax the law clearly contemplates, it is the duty of the board to do all within its power to provide for the children resident in subdistrict No. 7 school privileges equal to those offered the other children of the school township. It is our opinion that in attempting to provide for such children in the Vanderpool building the board committed an error. It is therefore directed that on and after January 1, 1910, the board of directors of the school township of Richland provide school privileges in other schools for the children resident in subdistrict No. 7 of said township and that transportation be provided for all such children who reside more than one and one-half miles from the schoolhouse where they are directed by the board to attend.

REVERSED.

JOHN F. RIGGS,
Superintendent of Public Instruction.

Des Moines, Iowa, December 15, 1909.

W. M. WASKOW v. INDEPENDENT DISTRICT No. 8, CENTER TOWNSHIP.

Appeal from Fayette County.

APPEAL. The action of the board in fixing the schoolhouse site should not be interfered with on appeal, except upon evidence that the board exercised its power improperly. School boards should not act with undue haste in making contracts when appeal is pending. Work done with undue haste to prevent relocation of school site will not prevent relocation if evidence justifies a change.

LOCATION OF SCHOOL SITE. The convenience of all residents concerned should be subserved in choosing a site.

On the fifth day of September, 1910, the board ordered that a new schoolhouse be erected "six feet east of the old one," which would be on the present schoolhouse site. On the sixth day of September, 1910, an appeal was taken from the action of the board by W. M. Waskow to the county superintendent, alleging that the proper place for said schoolhouse is eighty (80) rods west of the present school site, which would be approximately in the center of the district and that no children would be required to travel more than two (2) miles to reach the schoolhouse if so located, while rebuilding on the old site would be injurious to said affiant in that it would compel children where he resides to travel a distance of two and one-fourth (2¼) miles to school.

On trial, the county superintendent reversed the action of the board, and

ordered a suitable site procured eighty (80) rods west of the present site at or near the junction of the north and south road with the road running east and west.

From his decision D. N. Austin and John Hack, two members of the board, appeal, claiming that the county superintendent of schools erred in reversing the decision of the board and in ordering that said schoolhouse site be changed, and abused discretion in so reversing the decision of said board of directors for the reason that the location of said school site, as made by said board of directors, is proper and for the best school interests of said district.

From the findings of the county superintendent, as expressed in his decision, it appears that some of the patrons living east of the present site are constrained through fairness to those living west of the site to testify that they would prefer that the new schoolhouse should be located eighty (80) rods west of the present site; that a part of the membership of the board was actuated by selfish motives to retain the old site, that a preponderance of the evidence shows that a better site can be obtained eighty (80) rods west of the present site.

The question to be decided is, did the county superintendent err or overstep his authority in reversing the decision of the board and by ordering a change of site upon which to build a new schoolhouse, as directed in his decision?

Reference to the testimony in the case and to a map furnished with the transcript showing the location of houses occupied by residents of the district establishes the fact that by locating the new schoolhouse as ordered by the county superintendent no children would be required to travel over one and three-fourths (1¾) miles to school, except from the residence of the affiant in the case before the county superintendent, who would still have nearly two (2) miles to travel to school.

The action of the board in fixing the schoolhouse site should not be interfered with on appeal, except upon evidence that the board exercised its power improperly. In fixing the school site, the geographical position and the convenience of the people of each portion of the district should be considered. The discretionary power vested in the board does not preclude the authority of the appellate tribunal to decide the question upon its merits as the evidence favors, otherwise an appeal would be a useless provision of the law. It is even held that "the county superintendent is not limited to a reversal or affirmance of the action of the board, but he may determine the same questions which it had determined." (Opinion of attorney general published in the Iowa School Journal, April, 1866.) See *John Clark v. District Township of Wayne*, School Law Decision, 1876, page 47, *J. J. Wilson et al. v. District Township of Center of Monroe*, and *J. S. Folsom et al. v. District Township of Center*, School Law Decisions, 1907, pages 27 and 41. See also 110 Iowa, 652.

In the case in question, the old schoolhouse is considered unfit for school purposes, a tax has been levied for a new building and the board has proceeded, as hereinbefore stated. The time seems opportune to consider carefully the convenience and rights of all families in the district and in deciding upon a location for a new schoolhouse, every dwelling house in the district should be taken into account. See case of *J. S. Folsom et al. v. District Township of Center*, School Law Decision, 1907, page 41.

It should be noted that a meeting of the residents of the district was

called by the president for the purpose of gaining the views of said residents as to the proper location for the new schoolhouse. All members of the board were present at this meeting. The testimony found in the transcript discloses the fact that the meeting was well attended and that a majority of those who spoke favored the site at the center of the district. The individual testimony at the trial also discloses the same condition, but more pronounced in favor of the proposed new site at the center of the district. The testimony also shows that the board, which consists of three members, did not decide unanimously in favor of the old site. It appears in the testimony that there are some grounds for the accusation that the board was actuated by some selfish motive in coming to the conclusion, and there was an abuse of discretionary power in this respect. It appears in the answer to the affidavit of appeal filed with the county superintendent that between the date of fixing the schoolhouse site, September 5, 1910, and the date of said appeal, September 6, 1910, the contractor had already "entered upon a fulfilling of his contract and had laid the foundation and erected a part of the frame work of said school building prior to the time the notice of appeal was served." It is argued that a change in said site at this time might involve said school district in litigation with the contractor. It is obvious that special haste must have been exercised in the fulfillment of the contract.

In the case of *Atkinson et al. v. Hutchinson et al.*, 168 Iowa, page 161, the court has said: "When an order for a change of site is made, and it is not known that all persons affected are satisfied with the order, it appears to us that prudence would dictate that the execution of the order should be postponed until an opportunity has been afforded for a review of the same, if any desired to appeal." It would seem that a similar rule might apply in this case with regard to the erection of a new schoolhouse practically upon the old site. The board knew that there was dissatisfaction with this site and that an appeal might probably be made from its action in choosing the old site for the new building. The evidence shows that one of the directors had himself told appellee, prior to said action, that he might appeal therefrom. Under these circumstances, it would seem that the board might prudently have postponed the erection of the new building until an opportunity has been afforded for a review of their action, if any desired to appeal. We think, therefore, that the point attempted to be made by the board, to the effect that work already done by the contractor might involve them in litigation, is not well taken. If true, it is the fault of appellants and not of appellee, and the latter should not be made to suffer therefor.

From the evidence submitted in the case it appears that the convenience of all residents concerned can be better subserved by choosing a site for the new schoolhouse as directed in the decision of the county superintendent; that a majority of the residents favor such a location; that the patrons having the greatest number of children including one patron living on the east side of the district having the greatest number of children of school age of any one in the district favor the new site and that a preponderance of the evidence favors the central location as the more desirable site.

The decision of the county superintendent is AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, March 4, 1911.

WILLIAM ERICKSON AND C. G. YOUNGGREN V. INDEPENDENT SCHOOL OF COBURG.

Appeal from Montgomery County.

MINORITY. Even a small minority of the patrons of the school have rights that can not be ignored. School boards in locating schoolhouse sites, should equalize the distance to be traveled by children as nearly as possible.

TRANSPORTATION. Transportation of pupils in a small district is not feasible. The funds could be used to better advantage to pay better teachers and securing better equipment.

RIGHTS OF ALL. The rights of all must be considered rather than the convenience of even a majority in selecting a school site.

The history of this case and the conditions existing in the Independent School District of Coburg are very similar to those recounted in former decisions by the Department of Public Instruction.

The boundaries of the incorporated town of Coburg coincide with the boundaries of the Independent District of Coburg. The area embraced in the Independent District of Coburg consists of four sections of land as usually arranged, together with the adjacent forties on the north; the district being two miles from east to west and two and one-fourth miles from north to south. The platted town of Coburg is located about midway between the north and south boundary lines and to the extreme western side of the district. The present school house site is located about forty rods south of the center of the district at the center of the four sections which enter into the formation of the district.

The transcript in the case shows that a special election was held, as provided by law, in the Independent School District of Coburg, at which the following questions were submitted to the voters: "Shall the Coburg Independent District issue bonds in the sum of $1,500.00 for the purpose of purchasing site and construction of schoolhouse?" The proposition carried by a majority of two votes.

A special meeting of the school board followed when the board entered into negotiations for the disposal of the bonds and steps were taken toward securing plans for a new schoolhouse, to submit to the county superintendent for approval.

At the regular meeting of the board on the first day of July, the plans and specifications approved by the county superintendent were accepted, and the president of the board was authorized to purchase certain lots within the town plat of Coburg. The site selected is 212 rods west and 45 rods north of the old schoolhouse site, a distance of but a trifle over one-third of a mile from the west boundary line of the district.

From the order of the board directing the purchase of the lots selected for a new schoolhouse site, William Erickson and C. C. Younggren, farmers residing in the eastern part of the district, filed an affidavit of appeal with the county superintendent of Montgomery county, in which it is alleged that said board committed error in not taking into consideration the geographical position, number and convenience of the pupils residing in the district, and that the proposed site is so situated as to practically deprive the children living in the southeast and northeast parts of the district of the privilege of attendance at

school. The board evidently had not contemplated making provision for their attendance at any other school.

The county superintendent is of the opinion that the board erred in its selection of the new site and therefore reversed the action of the board. From this decision, the board appeals to the Superintendent of Public Instruction.

The board charges in its declaration of grievances that the county superintendent in making her decision, "went contrary to the numerical and geographical location of the majority of the children of school age living in the district and further that the evidence does not show that said board had planned to have the few children living in the extreme part of the district conveyed at public expense."

The evidence in the case shows that three of the five directors live in the town proper of Coburg.

The question to be determined is, did the county superintendent commit error in reversing the action of the board in selecting the site for the new schoolhouse so far removed from the geographical center of the district, notwithstanding the fact that about half of the persons of school age reside within the comparatively small area forming the town plat of Coburg, and further that a majority of the families live nearer the proposed site than the old one?

A school located within the borders of any town is a convenience to be appreciated, and a school building of modern architectural design may well be the pride of any community. However, the claim set forth by counsel for appellee is correct, "that even a small minority of the patrons of the school have rights that can not be ignored." It is the intent of the law, that school boards in locating schoolhouse sites, equalize the distance to be traveled by children to school as nearly as possible. We think it is clearly implied in Section 2803 that no child shall be required to travel an unreasonable distance in order to secure school privileges.

Section 2774 of the school laws provides that "when there will be a saving of expense, and children will also thereby secure increased advantages, the board may arrange.....for the transportation of any child to and from school in the same or another corporation."

The evidence in the case established the fact that none of the residents of the district live more than two miles from the old site, while the proposed site would place as many as four families each having several children attending school, from 2½ to 2¾ miles from school, which is considered too great a distance for children to travel to school, and would virtually deprive them of school privileges unless some means of transportation is provided for them. It is obvious from the testimony in the case that the board had not considered the matter of providing transportation for these children at the expense of the district. In so small a district, we very much doubt the advisability of selecting a site for a schoolhouse that would necessitate incurring the expense of providing proper transportation of children, when it is possible to locate a schoolhouse in the district where no one will be placed at an unreasonable distance from school. The use of school funds might be used to better advantage in salaries for the best teachers to be had and in securing the best possible equipment for the school. If the Independent District of Coburg included the four sections of land west of the present district, it could afford some expense for transportation of pupils and the location of the school would very properly be in the proximity of the town of Coburg.

The intent of the board to build up a graded school and provide for two departments is commendable. With a school population of about sixty persons it appears that the average daily attendance ought to exceed eighteen. Undoubtedly there are those among the older boys and girls who could profitably be in school, and possibly would be in school during the winter months at least if special school advantages were afforded in the district. Unquestionably as good a school can be provided where the old schoolhouse stands, or at any other place within the district, as at the proposed location. Even though the children in the town may be compelled to travel about ¾ of a mile to school, such distance would not be an unusual distance for children to travel to school in towns and cities.

The fact that nine-tenths of the school taxes are paid by residents outside the town plat of Coburg is not entitled to consideration in determining the location for the schoolhouse site. The child of the poorest parentage is as much entitled to free public school advantages as is the child of the extensive property holder who may be a heavy tax payer.

We agree with the county superintendent in the interpretation of the law when she states in her decision "that the rights of all must be considered rather than the convenience of even a majority and that the board erred in its selection of the proposed site." The case of *J. O. Severeid and John Stenberg v. Independent District of Fieldberg*, School Law Decisions, 1907, page 62, corroborates this view.

The decision of the county superintendent is AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, November 25, 1911.

F. C. PAINE v. THE SCHOOL TOWNSHIP OF AMSTERDAM.

Appeal from Hancock County.

RE-OPENING OF CLOSED SCHOOLS. The matter of re-opening a school is purely a discretionary power of the board, and like all discretionary acts of the board, is subject to appeal to a higher tribunal. The number of children who live in a district is not necessarily a determining factor in re-opening a school.

POWERS OF BOARD. Subdistricts do not exist as school corporations but merely subdivisions of the township unit and do not determine where children shall attend school. The board may determine what school in the corporation children shall attend without regard to subdistrict boundaries.

This appeal relates to the re-opening of a school ordered closed by the board as provided in Section 2773 of the School Laws. The school in question is located in subdistrict No. 5, Amsterdam Township, Hancock county.

At the last regular meeting (July, 1911) of the school board, F. C. Paine, the director for subdistrict No. 5, sought to have the school re-opened and have a teacher regularly employed as is done for the other schools in the school township. The board refused to open the school and hire a teacher, but directed that the children in each family residing in the subdistrict be assigned to the nearest school, with the privilege granted, if any families preferred to do so, of sending their children to schools of their choice in the township, including the graded school in the Independent District of Kanawha.

The school building in the Independent District of Kanawha is located about one mile south from the school house in subdistrict No. 5.

The board also ordered that the tuition and all necessary expenses for text-books and supplies for any children who might select the Kanawha school should be paid by the school township. The school township of Amsterdam furnishes free text-books and supplies for the schools of the district, consequently no discrimination of expense for text-books and supplies was allowed to stand against those who might choose to attend the Kanawha school.

F. C. Paine appealed to the county superintendent who sustained the board. Affiant then appealed to the Superintendent of Public Instruction.

The essence of the grievances set forth in the affidavit of appeal is "that the county superintendent erred in affirming the action of the board" for the reason that the evidence substantiates the cause of appeal from the decision of the board, viz., "the school board entirely ignored and failed to take into consideration the geographical location and the number and convenience of the pupils of school age in subdistrict No. 5; that all of the schools to which the pupils of said subdistrict No. 5 were directed to be sent are more inaccessible and at a greater distance from the respective homes of said pupils than the schoolhouse in subdistrict No. 5."

The gist of the argument of appellant's counsel is founded on the following phrases in Section 2773 of the Code of 1897; "taking into consideration the geographical position, number and convenience of pupils," which relate to the power of school boards in fixing schoolhouse sites. The citations to decisions of the supreme court relate to the same matter. When locating schoolhouse sites, the geographical position and convenience of pupils should be carefully considered in order that no child may be compelled to travel an unreasonable distance to school. Would the language of the law quoted apply with equal force to the power of boards in closing schools under Section 2773? We do not think so. The construction of the language of this section does not so indicate. The phrases quoted relate to fixing schoolhouse sites and not to closing of schools. The board possesses entire jurisdiction in the matter of fixing schoolhouse sites within the limitation of the law, but school boards cannot shorten the number of months of school to less than the required number of six months each year, except when authorized to do so by the county superintendent. However, the matter of re-opening a school is purely a discretionary power of the board, and like all discretionary acts of the board, is subject to appeal to a higher tribunal. It has ever been held by this department that discretionary action of school boards should be affirmed on appeal, unless by the evidence it is clearly proven that the board violated the law or abused its discretion.

The evidence in the case shows that four families having ten children to send to school reside in subdistrict No. 5; that two of these families have no farther to travel to school by attendance in subdistricts Nos. 4 and 6 than to the schoolhouse in No. 5; that there are public roads leading directly to these schools from both homes over which other children are compelled to go back and forth to school. The claim is made that the road to No. 6 over which affiant's children would be required to traverse is nearly impassable, yet small children from another family living across the road from affiant must travel this road to school. The teacher for No. 6, whether from choice or necessity, has boarded most of the time of late years with this family and must walk to school over this same alleged impassable road. The argument is advanced that because

the schoolhouse in No. 5 is in the direction of town from all residents having children to send to school, who live in subdistrict No. 5, the failure of the board to take this condition into consideration is evidence that said board has abused its discretion. There will probably be very few occasions when it will be convenient to drive to town and then return home just at hours when children should go to school in the morning and return home after the close of school. If there is any force in this argument, then there should be a general rearrangement of subdistrict boundaries in order that all children may travel in the direction of town when going to school.

Two families are situated at a greater distance from school by reason of the closing of the school in subdistrict No. 5. The plat submitted with the transcript shows these families reside—one a little over a half mile east and the other family about one-half mile north from the schoolhouse in district No. 5 and that both families reside about one and one-half miles to the next nearest schools in the district township and about one and one-half miles from the school in Kanawha. Wherever the element of distance is mentioned in the school laws, one and one-half miles is not considered an unreasonable distance to school. See Section 2803 of the Code 1897. Of course there might be unusual conditions, such as unbridged streams or impassable highways. There might be a wise saving of school funds by the closing of all schools when by so doing no child would be located more than one and one-half miles from school. The evidence shows that the children in this subdistrict were given permission to attend the school in the Independent District of Kanawha which would permit these children to travel to the town school, if there is any virtue in the argument "of opening a school so that children may travel in the direction toward town when going to school."

We can hardly conceive of a condition more favorable where it would be possible to apply the provision of Section 2773 concerning the lessening of the number of months of school each year. There is one family, that of Mr. Williamson, which does appeal to our sympathy. There are three little girls in the family, the youngest of whom is a little past five years of age and the oldest is nine years of age. This family resides east a little over one-half mile from the schoolhouse, and nearly one and one-half miles to No. 6 and about one and one-half miles to Kanawha, and yet these children need travel but one-half of a mile before joining other children and the teacher who, as before stated, boards usually in the direction of this home from No. 6. Undoubtedly there may be days in winter when children should be transported to school. We are not ready to say that the board has abused its discretionary power. "The action of the board may not be wholly approved by the judgment of the county superintendent, but if it be not illegal or clearly unjust, it should be sustained." *Edwards et al.* v. *District Township of West Point.* School Law Decisions.

We are impressed with the force of the claim made by counsel for appellant in his ably prepared argument, that until schools in the rural districts are consolidated and pupils transported at public expense, each subdistrict has an absolute right to fair treatment in the distribution of the district funds and in the maintenance of equal school privileges. However, that subdistrict is fortunate indeed where none of its patrons are located at a greater distance from school than one and one-half miles. Simply because there is a schoolhouse in a subdistrict, does not give any resident a vested right to demand a school.

It is clearly within the jurisdiction of the board to designate which school each child shall attend as long as there is no manifest abuse of discretion. We can not believe that there is abuse of authority by closing a school and directing that children shall attend another school when the greatest distance children will be required to travel does not exceed one and one-half miles.

A recent decision of the supreme court in upholding the opinion of the department in the case of *W. C. Arnold, et al., v. The School Township of Richland, Wapello county*, in requiring the board to provide transportation for those children, only, who live more than one and one-half miles from other schools, and where the board had failed to take action to replace the building that had burned in one of the subdistricts, would support the opinion that one and one-half miles should not be considered an unreasonable distance for children to walk to school.

The subdistrict does not exist as a school corporation, but merely as a subdivision of the township unit of organization, and is not formed necessarily to determine where children shall attend school, but the board may determine what school in the district the children shall attend, without regard to subdistrict boundaries.

The decision of the county superintendent is AFFIRMED.

A. M. DEYOE,

February 1, 1912. *Superintendent of Public Instruction.*

J. H. BECK AND S. O. ANDREWS v. SCHOOL TOWNSHIP OF JEFFERSON.

Appeal from Polk County.

HIGH SCHOOL. A township high school may not be maintained in a one-room country school where grade subjects are taught.

LOCATION OF TOWNSHIP HIGH SCHOOL. The location of a township high school is a little different from locating the site of a grade school.

DISTANCE. Distance is not so important because the children usually drive.

The above entitled cause originated in the action of the school board in changing the township high school from what is known as the Lincoln school in Jefferson township to the Herrold schoolhouse. For about two years, a township high school had been conducted in the Lincoln building, where there are two rooms separated by a rolling partition. The high school occupied one of these rooms. At the regular July, 1912, meeting of the board, action was taken by a vote of 6 to 3 "to try the high school at the Herrold schoolhouse for the ensuing year." The Herrold schoolhouse is an ordinary one-room rural school building. Two teachers are employed, one of whom has charge of the grades below the high school and the other teacher has charge of the high school. Both teachers are conducting work in the same room. The high school occupies one side of the room and the grades the other. There is no suitable classroom connected with the building. The attendance in both departments is small. The evidence shows that both teachers are doing good work considering the circumstances.

Jefferson township is very irregular in shape, and it is more difficult to select a central location for the high school than in the usual form of the congressional township. Taking into consideration those to be accommodated in the township high school, location of highways, the location of a cream station

near Herrold school on an interurban railway passing through the township, where farmers deliver cream, we are of the opinion that so far as mere location is concerned the board made no mistake in choosing Herrold in preference to Lincoln.

If the pupils in the township who want high school privileges and have been accustomed to attending the township high school at Lincoln were now attending Herrold, the attendance would be about the same as it was at the Lincoln school during the two years the high school was conducted at that place. But for some reason there are pupils in the vicinity of the Lincoln schoolhouse attending high school in an adjoining district and traveling farther to attend that school than would be necessary in order to attend their own high school at the Herrold schoolhouse. We are not questioning the motives of these families, but the fact should appear in this opinion, in order to show that if all pupils were now attending the high school at the Herrold location there would probably be about the same attendance at Herrold as formerly at the Lincoln school. The evidence shows that at least two pupils would have farther to go to Lincoln were the high school maintained there than any pupils would have to travel to the Herrold school. However, the matter of locating a site for the rural school for the grades below the high school is a little different from locating a site for a township high school. The usual size of the rural school district is four sections, with the express provision that the schoolhouse be located as near the geographical center as possible in order that it may be possible for all the children to walk to and from school. In order that no one may be discriminated against and be required to walk an unreasonable distance to school, the rights of a minority are as carefully guarded as the rights of a majority of children attending school.

In the matter of the location of a high school, it is somewhat different; for it is quite possible that a majority of the children will have to be transported to school, and there would be some reason to adjust the distance to school on a little different basis. Justice would not be violated by requiring one child to drive a little farther, provided several other children would be convenienced thereby.

The evidence shows that there are two or three barns within a few rods of the Lincoln school, and that there is no barn nearer than a quarter of a mile to the Herrold school. Undoubtedly shed room for teams should be provided near the school. This could be provided for either in private barns or better in sheds put up by the district on the school grounds. To be compelled to drive a quarter of a mile beyond the school to put up a horse and then walk back, is a factor of importance.

However, taking into consideration the center of population in the township as well as the geographical center, highways, accessibility from all parts of the township, we believe the board exhibited no abuse of discretionary power in selecting the Herrold site, as far as conditions just mentioned affect the selection of the proper location for a township high school.

There is another matter, however, that is determinative in this case. The rural high school is an institution of recent origin in Iowa. The tendency to establish rural high schools in the state is growing. The decision in this case is important in defining conditions that may seriously affect the future organization of rural high schools in the state. To establish the principle that a high school may be maintained in a one-room country school, by simply em-

ploying an additional teacher and conducting the high school in a room where another teacher is employed teaching the grades, would be unwise. In the matter of establishing a high school, the Department has advised that a separate room should be used for high school purposes. In harmony with this view, see Note 6, under Section 2776, in which graded and higher schools are defined. This note has appeared in several editions of the school laws.

Two separate schools with two teachers employed and conducting classes simultaneously in the same room, could not promote the best conditions for successful work. The opinions of experienced teachers given as witnesses for appellants and appellees reach the following conclusion: In order to secure the best work possible, it is reasonable to lay down this rule, that a separate room or rooms should be provided for the high school department depending upon the number of teachers employed in the high school department. A separate room exists at Lincoln building where a high school was maintained for two years, and we are of the opinion that the board of Jefferson township did err in changing the high school to the Herrold schoolhouse before a separate room was provided for the high school department. It is, therefore, ordered that the high school be transferred to the Lincoln schoolhouse until a suitable, separate room or building is provided in some other convenient place in the township, preferably near the Herrold schoolhouse.

We dislike to overrule the county superintendent or to interfere with the action of the board, but we believe the condition at the Herrold schoolhouse warrants a reversal, therefore, the decision of the county superintendent is

REVERSED.

A. M. DEYOE,

Superintendent of Public Instruction.

Des Moines, Iowa, December 28, 1912.

O. L. COX, *et al.* v. THE INDEPENDENT SCHOOL DISTRICT OF FABIUS NO. 2.

Appeal from Davis County.

GOVERNMENT SURVEY. The government survey will be accepted and a section even though it be short in acreage will meet the requirements of the law.

FORMATION OF NEW RURAL INDEPENDENT DISTRICTS. It was not the intention of the legislature to invest school boards with power to form new independent districts without a vote of the electors.

The independent rural districts of Burr Oak and Fabius No. 2 are adjoining districts and each comprises about eight sections of land located in the southern part of Grove township, Davis county. Appellants sought to have about four sections, according to government survey, of contiguous territory consisting of equal portions of the above named rural independent districts detached from each for the purpose of forming a new rural independent district, said new district to be named The Rural Independent District of McDowell. Appellants proceeded to have this done by concurrent action of the school boards of Burr Oak and Fabius No. 2, basing their authority for this plan of procedure upon Section 2798 of the School Laws of Iowa.

Accordingly a petition was properly prepared and signed by several patrons living in the central and southern parts of the proposed new district. This

petition was first presented to the Burr Oak Independent District. The board of Burr Oak decided in favor of granting the request of the petitioners by a vote of 2 for and 1 against. The board of Fabius No. 2 was then asked to concur in the action of the board of Burr Oak. The board of Fabius No. 2 rejected the prayer of the petitioners by a unanimous vote. From the action of the board of Fabius No. 2, the appellants appealed to the county superintendent. The county superintendent sustained the board. Appellants appealed to the Superintendent of Public Instruction.

A few of the facts and reasons why appellants are asking for the formation of a new independent district are as follows: That the distances to school are unreasonable, that the roads are bad, never having been properly graded and that unbridged streams interfere with the children's ability to travel to school.

The districts of Burr Oak and Fabius No. 2 or Beulah have been in existence in their present form for many years. From all that can be learned from the testimony in the case, there are good grounds for the contention of appellants. It is unreasonable to expect small children to walk from 3 to 3½ miles to school over roads not properly worked as some of them are compelled to do. Why such a condition concerning roads has been allowed to continue for so many years is difficult to understand. We cannot help but feel that there has been a too manifest disposition on the part of these districts to neglect the matter of establishing proper school roads and to provide adequate school privileges to all children in the district. We are inclined to the opinion that the spirit of rigid economy in the maintenance of their schools has been practiced without proper effort to furnish school privileges to the children of the district. Why did these districts wait until patrons were driven to appeal for relief, before taking steps for proper roads and allow transportation for pupils? Although some testimony was produced to show that some effort is now being made to open up roads to school and provide transportation since the trial before the county superintendent, which of course was taken too late to receive consideration on appeal to the Superintendent of Public Instruction.

The county superintendent sustained the board on the following grounds: 1. The territory proposed to be included does not consist of four full sections of land. 2. That the tendency is toward consolidation and not division in order to establish better school facilities, suggesting that transportation be provided appellants as a better solution of the problem. 3. That two of the schools, the Burr Oak and the school in the new district, would be very small and therefore inefficient schools. 4. That, although the new districts be formed, there would still be a few residents in both of the old districts with little better facilities than those affecting the appellants. It is also noted in the testimony that there are residents living in the north part of the proposed district who are opposed to its formation on the grounds that they would be farther from school in the new district than they now are from the schools they attend.

The decision of the county superintendent is well taken except as to the first reason. While some of the government sections do not contain 640 acres, yet they are all sections according to government survey, and we believe meet the requirements of the law in this respect. Had roads been provided and had the districts offered transportation before this action was taken, we should consider that these appellants had no cause for grievance. But under the present condition of the law, whereby the provisions for opening roads depends upon

a vote of the people and where transportation is optional with the boards, what assurance have the appellants that these matters will be improved? Both of these improvements are essential.

Let us now consider the legality of the procedure of appellants. The question involved is a difficult one. We have given the matter long and earnest consideration. As before stated, the action was taken under Section 2798 of the School Laws. Does this Section mean that new rural independent districts may be formed by concurrent action of school boards? It nowhere says so. The law simply states that "independent districts may subdivide for the purpose of forming two or more independent districts or have territory detached to be annexed with other territory in the formation of an independent district or districts—such new districts to contain not less than four government sections of land each, etc." The law is silent as to the plan of procedure, unless it be defined in the latter part of the section which says, "and the proceedings for such subdivision shall in all respects be like those provided in the section relating to organizing cities and towns into independent districts, so far as applicable." We must admit that the law is not clear. However, we cannot believe it was ever intended that school boards should be empowered to form entirely new independent districts by concurrent action, in other words, create new school corporations. Section 2794, which relates to the formation of independent village, town, and city districts, requires a vote of the electors residing within the proposed new district. Section 2792 provides that before a township district consisting of subdistricts can be changed into independent organizations, that the proposition must carry by a majority vote of the electors in each of the subdistricts. In the formation of the proposed Independent District of McDowell, there are residents living in the north part especially who are opposed to its formation because they would be placed at a considerably greater distance from school than they now are from Burr Oak and Fabius No. 2. Should these people be deprived of their privileges without having any voice in the matter? It is also true that outside of certain families seeking to be set off, the people in the remaining portions of Burr Oak and Fabius No. 2 are opposed to the division of the territory. They are not in favor of the formation of more schools and consequently smaller schools; but some of them favor providing reasonable transportation for those living at an unreasonable distance from school.

Again, as to the method of procedure in the subdivision of rural independent districts for the purpose of forming new independent districts, counsel for appellee makes the following statement: "We must admit that the meaning of this Section 2798, is not clear to us, but as we understand it from its origin up to the present time, we believe it means that no independent district can be established out of territory comprising two separate, independent districts, without first a majority of the votes of both districts affected by such change are cast in favor of such change."

Section 2798, in addition to the provisions already quoted, mentions two exceptions which permit the formation of independent districts with less than four sections of land—one where the proposed district includes a village or town, and the other where a natural obstruction exists, such as an unbridged stream. The counsel for the appellants claim that the appellants' action is duly authorized by law, and base their contention on the decision of the supreme court in the case of *School District No. 10 v. The Independent District*

of Kelley, from which they quote the following language: "Counsel for plaintiff contends that it is impossible for an independent district to exist consisting of less than four sections of land save under the contingencies specified in Code Section 2798, which relates, however, to subdivision of an existing independent district by *concurrent action of the board of directors of the two districts.*"

We are of the opinion, however, that the court in quoting the contention of the plaintiff's counsel in the case cited did not intend to rule on the manner of procedure, under Section 2798, since this point was not an issue in the case at bar.

In the Kelley case, the formation of a town or village district is involved, and Section 2794 provides how it may be done. Section 2798 also provides a method of how town and village districts may be formed which is not in accord with Section 2794 in all respects, but a vote of the electors is required in either case. The question of mode of procedure was not involved in the Kelley case; consequently we do not understand that the court placed any interpretation upon this matter as involved in Section 2798.

The determination of the plan of procedure in the case of formation of new school corporations is far reaching, and we therefore submitted the following question to the attorney general: "May school boards of two rural independent districts by concurrent action set off contiguous territory for the purpose of forming a new rural independent district under the provisions of Section 2798 of the Code without a vote of the people?" We simply quote the concluding paragraph of the opinion prepared by counsel in the office of attorney general: "One thing is certain, that this section is so uncertain in its meaning that it should be rewritten and the intended meaning more clearly expressed, and until this is done a board or officer whose duty it is to construe this section might well be justified in construing the same either way as in his own judgment he might think proper."

As stated before, we do not believe it was the intention of the legislature to invest school boards with power to form new independent districts without a vote of the electors. Until such time as the legislature shall provide otherwise, we shall hold that the plan of organization as applied to rural independent districts, under Section 2798, shall be like that provided for the organization of town and city districts and can be accomplished only by a vote of the electors; and that the plan of procedure in this case was not in accordance with the law.

With this conclusion, there is nothing to do but dismiss the case, as should have been the action of the county superintendent.

DISMISSED.

A. M. DEYOE,

Superintendent of Public Instruction.

Des Moines, Iowa, December 31, 1912.

A. L. BEAR v. INDEPENDENT SCHOOL DISTRICT NO. 3, JOHNS TOWNSHIP.

Appeal from Appanoose County.

SCHOOL SITE. School boards have power to choose a new schoolhouse site after bonds have been voted even though the district owns an old site, provided the bond issue was not voted to expend the money on the old location.

The Independent School District No. 3, Johns Township, Appanoose county, consists of six sections of land. A railroad crosses the southeastern part of the district. The village of Plano is located in the southeastern part of the district on the railroad, the plat of which extends within one-half mile of the eastern boundary of the district and within a few rods of the southern boundary. The original village plat was made about thirty years ago and was located entirely south of the railroad tracks.

A portion of land was later platted north of the tracks, we judge from the evidence, not many years ago. Two schools have been maintained in this district for many years, the site of one, known as the "college school," being located at the four corners at the center of the four sections of land to the west, and the site of the other, known as the Plano village school, is adjoining the village on the south.

Bonds were voted to build a new schoolhouse in the village of Plano. The proposition to sell the old site was voted down by the people. However, the school board decided to purchase a new site north of the railroad tracks. A. L. Bear, a resident of the western portion of the district and a patron of the college school, appealed from the action of the board. The county superintendent sustained the board. Appeal was then taken to the Superintendent of Public Instruction. The only question to be determined in this appeal is, did the school board abuse its discretionary power in selecting a new site north of the railroad tracks? The case seems to be a very simple one to decide.

The principal complaint of appellant seems to be that the greater number of the children who attend the Plano school live south of the railroad and that the crossing over the track is dangerous. It is true that there is always danger connected with crossing railroad tracks, especially in the case of children. This condition is not peculiar to Plano. Many cities, towns, and villages, and even rural communities, are intersected by railroads and children are compelled to cross the tracks in order to reach school, but it is no worse for children crossing railroad tracks in one direction than for those traveling in the opposite direction. It is the duty of railroad companies and of the town and township officials as far as possible to properly safeguard the lives of people at such places.

Counsel for appellant claims that where a district already owns a site that the school board cannot legally change to a new site without being directed to do so by a vote of the people. There would be grounds for claiming an abuse of discretionary power by the school board in the case of the removal of a schoolhouse of large size and constructed of material that would make it expensive or difficult to move the building. Had the bonds been voted to build on a particular site, then the school board could not disregard the vote of the people. In this case, a new schoolhouse is to be erected. The bonds were not voted to build on any specified site. We believe that it is within the jurisdiction of the school board to select a site for the same. Section 2773 of the School Laws of Iowa provides as follows: "The board may fix the site for each schoolhouse, taking into consideration the geographical position, number and convenience of the scholars." This Department has always ruled that unless it can be shown that the school board has clearly abused its discretionary power, its action should not be reversed.

The evidence shows that the new site will be more convenient for all por-

tions of sections 16 and 21 on the east side of the district for which the Plano school is maintained. The school appears to be established largely for the children residing in the village of Plano. There does not seem to be much choice between the old site and the new as far as average distance to school of residents in the village is concerned.

We do not see wherein residents in the western part of the district can be aggrieved by locating the school on the proposed site. In fact, should they ever desire to send children to the Plano school, it seems that the new site would be more conveniently situated. As before stated, the only question involved in the appeal is, did the school board abuse its discretionary power in voting to purchase a new site? We do not find that the board acted with prejudice or malice, neither do we find that any one will be inconvenienced by choosing the new site. We believe that the county superintendent could find no valid reason for reversing the action of the board. The county superintendent in sustaining the board is therefore approved.

AFFIRMED.

A. M. DEYOE,

October 3, 1913. *Superintendent of Public Instruction.*

F. B. DOW v. THE BOARD OF DIRECTORS OF THE NEW INDEPENDENT DISTRICT OF STOCKPORT.

Appeal from Van Buren County.

DIRECTOR. Neither the county nor the state superintendent have authority to determine the validity of school elections. This may be determined in the courts only.

SCHOOL BOARDS. School boards have no authority to oust an illegally elected director, *quo warranto* proceedings are the exclusive legal remedy.

Appellant contends that he was elected director of the New Independent District of Stockport at the regular March election in 1913 and that he was deprived of his rightful claims to the office of director by the action of the old board in declaring the election illegal.

At a meeting of the old board of directors held on the third Monday in March, the following resolution was adopted by a majority of one vote: "Be it resolved by the board of directors of the New Independent District of Stockport that at the election of directors of and for the said school district on the 10th day of March, A. D. 1913, no person was legally elected to the office of director, and that the present directors therefore constitute the legal board of directors of the district until their successors shall hereafter be duly elected and qualified." Counsel for appellant calls attention to the fact that two of the directors who were defeated for re-election voted in the affirmative on the adoption of the resolution.

Counsel for appellant maintains that he is not seeking in the case at bar to have the county superintendent determine whether the election was legal or illegal, in fact he concedes that the county superintendent is without jurisdiction to decide a question involving the legality of an election, but is seeking to establish the principle that the county superintendent is legally authorized to determine a question which involves the jurisdiction of the board with

respect to any action it may take. With special application to the case at bar, counsel claims, "a reversal of the action of the board of directors because they had no jurisdiction, no power, no right to adopt the resolution in question."

Counsel for appellee is of the opinion that, "the condition of the Stockport School District, as to the election of directors, has been in chaos ever since the formation of the district, and it is contended that the district had no power or right under the law to elect directors as it pretended to do in 1913, hence the merits of the controversy, it will be readily seen, is not before this court so that it could be determined on appeal; and it will also be readily seen, the merits of that controversy is one for the courts, having power to determine the whole matter, and enforce its decision or judgment by ousting illegal directors, if it be found that any are illegally claiming and pretending to act, and by inducting into office such persons as the court may find entitled thereto."

Motion to dismiss the case was filed with the county superintendent by attorney for appellee on the grounds that the county superintendent was without jurisdiction in cases involving the legality of school elections and any action of a school board with respect thereto.

We can see no particular advantage to be gained, neither can we see that the settlement of questions similar to the case at bar will be facilitated by an appeal to the county superintendent, in the light of the decisions of the courts and the rulings of the Department of Public Instruction. The courts have invariably ruled that when title to office is the avowed or real subject in controversy, then *quo warranto* is the exclusive legal remedy. It has been the ruling of the Department of Public Instruction all along that all questions in dispute concerning school elections, and any action of a school board with respect thereto, are matters for the courts to determine and that an appeal would not lie with the county superintendent. *Miner v. District Township of Cedar.* S. L. Decisions, 1911, page 205.

The election returns appear to show that F. B. Dow was elected director. If we accept the theory of attorney for appellant that the principle he sought to have established or determined does not involve the legality of an election or the title of appellant to the office of director, it is very clear that had the county superintendent assumed the authority to rule that the board acted without jurisdiction in declaring the election illegal, that appellant, F. D. Dow, would probably have been allowed to qualify as a member of the board to take the place of the member of the old board, who, the election returns indicate, was defeated. The rights of appellant to hold the office of director would have remained undetermined, however.

Now let us return to the limited construction put upon the purpose of this appeal by counsel for appellant, viz., the authority of the county superintendent to determine matters pertaining to the jurisdiction of school board.

The case of *Perkins v. The Board of Directors of the Independent School District of West Des Moines* may throw some light on the matter. 56 Iowa, 476.

"It is very plain that in one class of cases appeals are not the exclusive remedy for reviewing or assailing the decisions and orders of the school directors. This class includes all cases wherein the jurisdiction and power of the directors are brought in question and wherein questions arise involving the construction of statutes conferring power upon school officers.

The courts of the state are arbiters of all questions involving the construction of the statutes, conferring authority upon officers and jurisdiction upon

special tribunals. It was certainly never the intention of the legislature to confer on school boards, superintendents of schools, or other officers discharging quasi-judicial functions, exclusive authority to decide questions pertaining to their jurisdiction and the extent of their power. All such questions may be determined by the courts of the state."

We are of the opinion that the whole matter is a question for the courts to determine and that the county superintendent was without jurisdiction.

The action of the county superintendent in dismissing the case is approved.

AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, August 21, 1913.

WM. KOPASKA V. THE SCHOOL TOWNSHIP OF SEELEY.

Appeal from Guthrie County.

APPEAL. An appeal may not be taken from an action of the board that is not final.

REMEDY. In case a school board fails to carry out the will of the electors as expressed the remedy is *mandamus.*

The following facts in the history of the case are gathered from the transcript. At the annual March meeting in 1910, the board of directors of the School Township of Seeley was authorized by the electors to purchase a school road forty feet wide and about one-half mile in length, for the purpose of giving one William Kopaska, a road to school. The board was further authorized to order the levy of a tax not to exceed five mills on the dollar to purchase said road. A tax of three mills on the dollar was ordered by the board for the specific purpose of buying the Kopaska road. The money is now in the hands of the school treasurer, and is more than ample to pay for the land required for the road. It appears that the board has made some attempts to secure the land for the road but has failed to reach an agreement with the owners as to prices for the property.

The question of allowing the school board an option of securing a road for Mr. Kopaska in another location was later submitted to the electors of Seeley township district and again the voters favored the location of the road as at first directed.

At the annual meeting of the board, July 1, 1913, Mr. Kopaska was represented by his attorney who presented a petition to the board praying that immediate action be taken for the establishment of the road. Whereupon the following motion was lost by unanimous action of the board. "Moved that we grant the petition of William Kopaska and proceed to establish and procure for use said school road as in petition set forth; that warrants issue in the following amounts to the respective parties for land and damages because of the establishment of said school road.

J. B. and Mary Tallman	$125
Ann Congdon	200
Hans Jorgenson	525

"The secretary is hereby instructed to issue said warrants, have them prop-

erly signed by the president, and to deliver same to said parties, taking their proper receipt therefor."

The amounts set forth in the motion are purported to be the amounts claimed by the owners of land wanted for the road. Mr. Kopaska appealed from the action of the board to the county superintendent, claiming the said action of the board to have been a final action. After the hearing was concluded, the county superintendent dismissed the appeal on the ground that said action by the board was not final and that the proper action by appellant was not appeal. Appeal was taken to the Superintendent of Public Instruction.

We agree with the county superintendent in dismissing the appeal. The board had the right to refuse to allow the prices as fixed by the motion, if considered excessive.

Section 2815 of the School Laws provides the method whereby school boards may by condemnation proceedings obtain right and title to schoolhouse sites and land for school roads when property so desired cannot be secured upon satisfactory terms to the school board by mutual agreement between the board and the land owners. The law provides for the appointment of disinterested persons to act as referees who "shall fix the damages sustained as near as may be on the basis of the value of the real estate so appropriated * * * * and upon the amount found by the referees being deposited with the county treasurer for the use of the owner, possession may at once be taken."

A refusal by the board to proceed according to the provisions of this act should undoubtedly be considered as a final action of the board. The board has not *refused* to resort to the extent of the law to secure the school road for Mr. Kopaska. It has simply failed to do so.

It seems that an agreement between the board and the owners of the land is improbable. We are of the opinion that the board should have come to this conclusion some time ago. We are of the opinion also that the board of the School Township of Seeley has been dilatory almost to the extent of negligence of duty in not carrying out the instructions of the voters in providing a road for Mr. Kopaska. This is a matter of much importance to Mr. Kopaska who has several children to send to school. No children should be compelled to travel through neighbors' pastures and climb barb-wire fences to reach school. School districts can well afford to provide suitable roads for children to travel to school unless conditions are very unusual.

Section 2778 of the School Laws provides "that school boards shall carry into effect any instructions from the annual meeting upon matters within the control of the voters." It seems unreasonable that it should be necessary for a school board to delay nearly four years in carrying out the will of the electors as expressed at an annual meeting.

We are of the opinion that the remedy in this case is an application to the court of law for *mandamus* to compel the board to act as directed by the electors and that an appeal is not the proper method of procedure. We trust that the board will now act promptly in the matter and that it will not be necessary for Mr. Kopaska to apply to the court for relief.

The decision of the county superintendent is AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, January 6, 1914.

O. J. STRIKE v. THE INDEPENDENT SCHOOL DISTRICT OF LELAND.

Appeal from Winnebago County.

EQUAL SCHOOL PRIVILEGES. The law contemplates that school boards shall render justice to all children residing within the district. Two and one-half miles is too far to require small children to walk to school.

TRANSPORTATION. Transportation as provided in Section 2794-a does not apply to schools organized under Section 2794 but applies to consolidated schools only. However, transportation of pupils in rural schools is many times advisable.

DUTY OF SCHOOL BOARD. A school board has not exhausted its powers to provide proper school advantages until it has taken full advantage of the law.

The town of Leland was incorporated in 1895, consisting of six sections of land. The Independent School District of Leland was formed in the same year under the provisions of Section 2794 of the School Laws of Iowa, consisting of the incorporated town of Leland and two additional sections including one subdistrict from the school township of Forest and one subdistrict from the school township of Newton, Winnebago county. The Independent School District of Leland is two miles east and west, by four miles north and south. The town plat of Leland is located about one-half mile south of the center of the independent district, in which stands the Leland schoolhouse. In the stipulation of facts as made of record at the request of defendant and which is made a part of the transcript in the case, the following statements appear: "Prior to the year 1895 the schoolhouse in the subdistrict of Forest township was located in the village of Leland and there was a schoolhouse in the geographical center of the subdistrict of Newton township. After the formation of the said independent district, school was continued at each of the said locations until about the year 1905, when school was discontinued in the schoolhouse in Newton township and ever since such discontinuance the school board has transported to the Leland school pupils tributary to the Newton school, the average number being about fourteen pupils, and has not provided transportation for other children at any time. As shown by the secretary's report, there are seventy children of school age in the corporation. That there are not and never have been any other branches taught in said district other than the usual and ordinary requirements for country schools which are up to and including the eighth grade. The average attendance in the Leland school for the year 1912-1913 was forty-two pupils."

About the year 1900, a new four-room schoolhouse was erected in the town of Leland. Two teachers have been employed in the Leland school since the discontinuance of the school in the Newton township territory.

O. J. Strike, appellant, lives in the southern part of the Independent School District of Leland, in what was formerly the subdistrict of Forest township, about two and one-half miles from the Leland school. Some children living in the northern part of the Leland Independent District, in what was formerly the Newton township subdistrict, are being transported to school, who live no farther from the Leland school than does Mr. Strike. The board has never provided transportation for Mr. Strike's children, claiming the district could not afford to provide transportation for one family; that by providing trans-

portation for Mr. Strike, a precedent would be established that might in the future embarrass the district financially. Mr. Strike has sent his children some of the time to a school in an adjoining district, a distance of a little over one and three-fourths miles, and the tuition has been paid by the Leland district. There is no evidence submitted to show that the school board of the Leland district has ever attempted to arrange with the board of the adjoining district for the attendance of the children of Mr. Strike in accordance with Section 2774 or Section 2803. The evidence does show that the school board of the Leland Independent District has allowed bills for tuition for Mr. Strike's children in an adjoining district and has never refused to do so. But attendance of his children in an adjoining district never was satisfactory to Mr. Strike. He has at different times petitioned and requested the board of the Leland District to provide transportation for his children to their own school. The board failed to take any action on the petition until ordered to do so by the court under *mandamus* proceedings. The board then denied Mr. Strike transportation for his children.

Mr. Strike appealed to the county superintendent and claimed the district must furnish transportation on the following grounds:

"1. That the law making transportation mandatory was provided in Section C, Chapter 143, Acts of the Thirty-fourth General Assembly (Section 2794-a2, School Laws of Iowa, Edition of 1911), as applicable to districts organized under Section 2794-a, Chapter 143, Acts of the Thirty-fourth General Assembly, was equally applicable to districts organized under Section 2794 of the Code. (Sections 2794-a and 2794, School Laws of Iowa, Edition of 1911.)

"2. That by denying the affiant the relief asked in his said application the board is discriminating against the affiant by denying him school privileges granted to others in the said district similarly situated with respect to school advantages."

The first proposition depends upon what construction is given to the Sections of the School Laws held in question, viz.: Sections 2794, 2794-a and 2794-a2. The second proposition refers to the duty of the school board in providing equal school privileges to children living in the district situated under similar circumstances, the facts concerning which must be determined upon the evidence submitted in the case.

The county superintendent bases his reasons for reversing the board on the following grounds:

With reference to the first proposition, the county superintendent assumed that the legislature intended Section 2794-a to be an amendment to Section 2794, therefore transportation is compulsory in both instances in accordance with Section 2794-a2; that Section 2794 is a provision for the formation of an independent district to include a city, town or village and territory contiguous thereto, through process of annexation or consolidation without limitation as to size of the district; that Section 2794-a is a provision for the purpose of encouraging further consolidation of school districts in exclusively rural communities. The county superintendent "inferred that the legislature considered sixteen sections about as small a territory as might be consolidated in a section containing no city, town, or village, and be financially able to maintain a school where transportation is furnished."

With reference to the second proposition, the county superintendent sup-

ported the contention of appellant, and considered this cause sufficient, providing he has taken an erroneous view concerning the first proposition.

We cannot find the least foundation for the assumption of counsel for appellant, in which the county superintendent concurred, that Chapter 141, Acts of the Thirty-first General Assembly, as amended by Chapter 143, Acts of the Thirty-fourth General Assembly (Sections 2794-a to 2794-a7, School Laws of Iowa, Edition of 1911), was intended as an amendment to Section 2794 of the School Laws of Iowa. By reference to the bill as enacted by the General Assembly, there is nothing in the title, nor in the language of the law, to indicate that Section 2794-a is to be considered as an amendment to 2794 or that the two sections are connected laws. Section 2794-a2 which makes transportation mandatory was enacted with Section 2794-a and applies to independent consolidated districts only; such as are formed in accordance with Section 2794-a. The county superintendent was clearly in error in assuming that Sections 2794 and 2794-a are related laws in the sense that the former provides for consolidation of school districts which include a city, town, or village, and that the latter refers especially to the formation of consolidated independent districts composed entirely of the union of rural districts. Section 2794-a is the only section of the school laws that provides for the formation of consolidated independent districts and in which transportation of pupils is made mandatory by Section 2794-a2. The fact that one section is number 2794 and the other is numbered 2794-a should not be construed to mean that the second was intended as an amendment to the first. Section 2794-a was enacted several years after Section 2794, but was so numbered by the editor of the Code Supplement, 1907, to give the law the proper setting in the Code with other laws relating to formation of school districts, the plan followed frequently in numbering sections in the Code. Section 2794-a is applicable to conditions and makes requirements independent of Section 2794. This is the opinion of those well versed in the law and having a broad legislative experience.

The Independent School District of Leland is not a consolidated district in the meaning of the law; it was not formed in accordance with Section 2794-a, therefore, appellant cannot legally claim transportation for his children as provided in Section 2794-a2.

However, we are of the opinion that the law in Sections 2774, 2803, and 2806 amply provides for just such cases as that of Mr. Strike, and that the law contemplates that school boards shall render justice to all children residing in the district. Further, we are of the opinion that two and one-half miles is too far to require small children to walk to school.

As to matters of fact, we think the county superintendent is correct in the following conclusions: "The evidence shows that the board has made no attempt to furnish appellant school privileges in another corporation as provided by law. The evidence also shows that the distance to the nearest school outside the Independent District of Leland is really an unreasonable distance for small children to walk to school, even though such arrangements were made. It is self evident that the privileges furnished in a small rural school are not equal to those which may be and are afforded to pupils in a two-room school in which more time may be given to classes and where in general better teachers are employed and more money expended for all purposes. In order to guarantee appellant's children equal privileges, it will be necessary for the board to furnish the privileges within the school corporation in which the children reside."

"It must be admitted that the board is not furnishing appellant's children the same school privileges as far as possible as are accorded to other children living within the school corporation, a duty incumbent upon every board."

The county superintendent offers the following solution of the problem in which we concur: "The board, in my opinion, may pay the appellant a reasonable amount for the transportation of his children, even though the amount might not be acceptable to the appellant." It would bankrupt many independent districts in the state were such districts compelled to hire special vehicles to transport different families located as is Mr. Strike. No such result will occur by making an allowance for the transportation of children as suggested in his case. It must be acknowledged that Mr. Strike is not as fortunately situated with respect to neighbors having children to send to school as are the patrons in the northern part of the district, and it seems improbable that the district could hire a special driver to transport his children without incurring an expense to the district nearly equal to the total expense of transporting the children of several families living north from Leland. We believe the claim of Mr. Strike is entitled to recognition by the board and that he should be allowed an amount for the transportation of his children at least in proportion to the average cost of transporting other children in the district.

"When there will be a saving of expense, and children will also thereby secure increased advantages, it may arrange with any person outside the board for the transportation of any child to and from school in the same or in another corporation and the expenses shall be paid from the contingent fund." Section 2774 of the School Laws.

Simply because one family may be somewhat isolated from other families should not excuse the district from furnishing that family as far as possible equal school advantages with other families grouped together and similarly situated with respect to distance from school.

"While the law does not prescribe a maximum for school travel, yet by permitting provisions to be made under given conditions for children to attend other schools than their own when they live more than one and one-half miles from the latter, it is evident that the legislature regarded that distance about as far as a child should travel to reach school." *Severeid & Stenberg v. Independent District of Fieldberg*, S. L. Decisions. Also Section 2803, School Laws of Iowa.

"While it is incumbent on the board to furnish reasonable school privileges for all children of the township, it is often the better plan to transport pupils to existing schools than to establish additional schools." *Hancock et al. v. School Township of Franklin*, S. L. Decisions. Also S. L. Decision, *Arnold et al v. School Township of Richland*, and Supreme Court decision sustaining the opinion of the Superintendent of Public Instruction in Arnold case, 152 Iowa, 500.

"The board of each school corporation * * * shall estimate the amount required for the contingent fund, * * * and such additional sum as may be necessary not exceeding five dollars for each person of school age for transporting children to and from school." Section 2806, School Laws of Iowa.

A district whose taxable valuation is large, or a district embracing a larger area than the customary four sections, should undoubtedly avail itself of its ability to raise funds for the proper support of its school or schools. We do not feel that any school board has exhausted its power to provide proper school advantages for children living an unreasonable distance from school until it has

taken full advantage of the law as found in Section 2806 of the School Laws. No other interpretation of the law can consistently harmonize with the principle of providing equal school privileges as far as possible for all children. The law limits the amount that may be levied for transportation purposes, consequently there can be no danger of embarrassing any district financially for this purpose. We believe it is consistent with the law and only fair to appellant, for the board to make a reasonable allowance for the transportation of his children to the Leland school. We are of the opinion that it would be unfair to base the allowance on the attendance of one child considering the total number of children transported as given in the stipulation of facts in case there should be only one child attending school from the Strike farm and the resident of said farm were compelled to furnish his own horse and vehicle of transportation.

In so far as the decision of the county superintendent is based upon the proposition that Section C, Chapter 143, Acts of the Thirty-fifth General Assembly (Section 2794-a2, School Laws of Iowa, Edition 1911) is applicable to the Independent School District of Leland, the same is reversed, but inasmuch as his ruling is proper on the ground of an unreasonable distance for small children to travel to school and that the children of Mr. Strike are entitled to equal school privileges with other children in the district in as far as the board is able to provide, his decision is affirmed except that the same is hereby modified so as to permit the school board to make to Mr. Strike, or his successors, an allowance for transportation of his children equal at least to the average cost of transporting pupils to school in said district, from and after the commencement of the next term of school in said district in lieu of transporting said children, by electing so to do by August 15, 1914, notice of such election to be filed with the county superintendent of schools of Winnebago county, provided that the minimum allowance shall not be less than six dollars per school month.

The decision of the county superintendent is therefore AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, June 22, 1914.

JOHN ALLSUP *et al* v. THE INDEPENDENT SCHOOL DISTRICT OF MAPLE GROVE, CEDAR TOWNSHIP.

Appeal from Mahaska County.

BOUNDARIES. The description of the boundaries given in the original notice and the notice of election should be the same.

NOTICE. Due and legal notice of election must be given. The statute, however, does not require that the description shall be printed on the ballot as the voters have ample opportunity to familiarize themselves with the posted description of the territory included in the consolidation.

The above entitled action relates to the formation of the Consolidated Independent School District of Wright, Mahaska county, as provided in Section 2794-a, School Laws of Iowa, edition of 1911. (Chapter 141, Acts of the Thirty-first G. A., as amended by Chapter 143, Acts of the Thirty-fourth G. A.)

Briefly stating the history of the case, the proposed consolidation includes the

Maple Grove, and parts of the rural independent districts of Buckeye and Pleasant Grove, all in Mahaska county. The petition describing the boundaries of the proposed consolidated independent school district containing not less than sixteen (16) sections of land and signed by more than the required number or voters was approved by the county superintendent and filed with the school board of the Independent District of Maple Grove.

The following is quoted from the secretary's minutes of a called meeting of the school board of the Independent District of Maple Grove, held at Wright on the 19th day of May, 1914: "A petition has been circulated and signed by more than one-third of the qualified voters of the school districts of Unity of Spring Creek, Zoar of Harrison, South White Oak of White Oak, and Maple Grove of Cedar Township, to call an election to vote on the question, 'Shall the proposed whole of the rural independent districts of Zoar, Unity, South White Oak, and Consolidated Independent District of Wright be established?' said petition being approved by the county superintendent May 16, 1914, and placed in my hands May 18, 1914." An election was called on June 2, 1914, and the secretary instructed to post notice of election. A map of the proposed consolidated independent district shows the village of Wright to be located at the four corners of the independent districts of Unity, Zoar, South White Oak, and Maple Grove.

Appellant denies the validity of the proceedings by which the Consolidated Independent School District of Wright was established and organized and hereby seeks to have the establishment and organization of said Consolidated Independent School District of Wright nullified. Several irregularities and errors in the proceedings are charged by appellant in his affidavit of appeal and an amendment thereto. Counsel for appellant places special emphasis upon the following alleged particulars wherein the law was disregarded:

"That there is a fatal variance between the petition, the notice of election, and the question as submitted upon the ballot. No two of the same being alike."

"That there was no petition filed in the district having the greatest number of voters, as provided by law, as a basis for the calling of the said election, and that there was no election called and held to vote upon the organization of the proposed district by the Board of Directors of the district within said territory having the greatest number of voters, as provided by law."

"That said notices of election provided for an election at which the polls should be opened at 10 o'clock a. m., which is contrary to law."

The ruling of the county superintendent, dated August 14, 1914, contains the following: "It is hereby decided that there is no merit in the appeal; that the law has been substantially complied with in the matter of procuring and filing the petition for consolidation; that the election was legally held, and that the judges and clerk of said election were legally qualified to act, and that the statute has been substantially complied with in every respect."

Appeal is carried to the Superintendent of Public Instruction.

We find that the descriptions of the boundaries given in the original copies of the petition and the notice of election are the same, and that no error was committed in this respect. With reference to the allegation that an exact and complete description of the boundaries of the proposed consolidated district should have been printed on the ballot and that said description on the ballot should correspond to those given in the petition and in the notice of election, we are of the opinion that the law nowhere makes any such requirement. Undoubtedly in case the description of the boundaries were printed on the ballot, then said

description should agree with the descriptions given in the petition and in the notice of election. We do not find that the statute requires that the description be printed on the ballot. In fact, since the law makes no such requirement, we are of the opinion that such printing of the description of the boundaries on the ballot would be entirely useless and superfluous. Every voter had ample opportunity to become familiar with the description of the territory included in the proposed consolidation by reading the notice of election. The statute implies that notice in writing of such propositions as will be submitted to and be determined by the voters, shall be posted by the secretary of the board in at least five public places in said corporation, for not less than ten days next preceding the day of the meeting." The proposition submitted in this case was set forth in the petition describing the boundaries of the proposed district and requesting the establishment of a consolidated independent district. (Section 2746, School Laws of Iowa, edition 1911.) Section 2749 of the School Laws of Iowa, edition 1911, practically suggests the form of a ballot to be used in school elections. There are advantages in having a form of ballot that is as simple as possible and yet clearly stating the proposition to be voted upon. The wording of the ballot used was as follows:

Shall the districts of Zoar, Unity, Maple Grove, South White Oak, and parts of Buckeye and Pleasant Grove districts be formed into a consolidated district?

Yes.

No.

We believe a better wording would have been as follows:

Shall the proposed Consolidated Independent District of Wright be established?

Yes.

No.

A note of explanation as to how to mark the ballot when voting "Yes," or when voting "No" would have been instructive to the voters.

The evidence does not show that any other proposed consolidated independent district including any of the territory included in the proposed Consolidated Independent District of Wright was being considered.

We do not excuse the action of the school board in fixing an hour for the opening of the polls different from that as provided in Section 2754, School Laws of Iowa, edition 1911. It was a dangerous thing to do, and might easily have resulted in sufficient cause for the courts to rule the election not legally conducted. Section 2754 of the School Laws, provides that the polls in rural independent districts shall open at 1 o'clock p. m. and must remain open not less than two hours. Appellant finds no fault with the hour of closing the polls, viz., 3 o'clock p. m.

Mack's Cyclopedia of Law and Procedure contains the following concerning the construction of a statute with respect to the conduct of elections: "The provisions of a statute as to the time of opening and closing the polls is so far directory that an irregularity in this respect which does not deprive a legal voter of his vote or admit a disqualified person to vote will not vitiate the election. But if the departure from the provisions of the statute in regard to the time of opening or closing the polls was so great that it must be deemed to have affected the result, the election must be called invalid." Volume 15, page 364.

From the above citation, it appears that the courts have not held an election illegal because of an irregularity as to the time of opening or closing the polls unless it has been shown that illegal votes were cast or that persons were de-

prived of their right to vote by reason of such irregularity. No such charge is made, neither does the testimony reveal any such condition. However, the question of the legality of an election has always been considered a matter for the courts to determine.

Finally, we find no testimony taken in the trial before the county superintendent showing that any voter was misled or deceived concerning the proposition voted upon in marking his ballot, that no one was deprived of his rights and privileges as a voter, or that any one voted who was not a legal voter by reason of the opening of the polls at 10 o'clock. Neither does the testimony establish the contention of appellant that the petition was not filed with the proper board, viz., the school board of the Independent District of Maple Grove.

After carefully reading the transcript, including the testimony, we agree with the county superintendent, "that the statute has been substantially complied with in every respect."

The decision of the county superintendent is, therefore, AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, November 18, 1914.

J. G. SHEA v. THE DISTRICT TOWNSHIP OF PILOT.

Appeal from Cherokee County.

DUTY OF PARENTS. It is not the intention of the statute to place all the responsibility and all inconvenience upon the board and take all responsibility of transportation from the parents.

POWERS OF BOARD. There is no impropriety under the law in a board making an allowance to parents for transportation but it is purely discretionary.

DISTANCE. There may be some injustice to fix a maximum limit as a reasonable distance to travel to school. Something depends upon the conditions of the highway and the age of the pupils.

Appellant is a farmer living in Pilot township, Cherokee county, Iowa. He has four children of school age; the youngest being about six and the oldest twelve years of age. The nearest school to his home by a traveled highway is about two and one-half miles. An explanation of the distance of appellant's home from school is made in his affidavit of appeal as follows:

"That there is no schoolhouse or school in said Pilot township nearer to affiant's home than about two miles and one-half except a schoolhouse located across the Little Sioux River, which is inaccessible by reason of the fact that there is no bridge or crossing over said river nearer than about two miles and a half from affiant's home, making the travel to said schoolhouse from affiant's home a distance of about five miles."

It is averred that appellant at different times made application to the school board of the District Township of Pilot to allow or furnish transportation for his children to and from school. The school board had directed that appellant's children attend school in subdistrict No. 5, which is the school located about two and one-half miles from his home. The authority of the board of directors to direct where children shall attend school within the corporation is fixed by Section 2773 of the Code. (Same section in School Laws, edition of 1911.) The

board agreed to allow appellant $10.00 per month for the transportation of his children to school in said subdistrict No. 5. This amount was accepted by him for a spring term of school of about two months. Appellant became dissatisfied with the amount paid by the board, refused to accept the allowance, and demanded that the board of directors furnish transportation for his children to school. Appellant has sent his children to a parochial school, at his own expense, in the city of Cherokee, a distance of about four miles, nearly all of the time they have attended school.

Conditions with respect to distance to school have not changed since Mr. Shea purchased the farm where he now resides. He purchased the farm knowing these conditions. No school has been closed or discontinued to cause him greater inconvenience.

Another school patron, a neighbor of Mr. Shea, by the name of Townsend, has been transporting his children, seven in number, to subdistrict No. 1, a distance of three and one-half miles, for the sum offered appellant, namely $10.00.

Several disputed questions are forced upon us for consideration in the case at bar:

1. What is the meaning of the following language of the law found in Section 2774? "The board of directors * * * may arrange with any person outside the board for the transportation of any child to and from school * * *." 2. Did the school board err or violate the law by offering Mr. Shea $10.00 per month to transport his children to school? In other words, is it illegal for a board to contract with a parent to transport his own children to school? 3. In case the parent refuses to accept the amount the board agrees to allow him for transporting his own children to school, can the board be compelled to hire a driver who shall furnish a team and wagon for the purpose of transporting the children of every family to school that happens to be situated at a distance that may reasonably be considered too great for children to walk to school, regularly? 4. Was the sum of $10.00 allowed by the board to Mr. Shea a reasonable compensation under the circumstances? 5. The question also arises, what shall be considered an unreasonable distance for children to travel to school? 6. Should the law be construed to mean that it is an abuse of its discretionary power for a board to refuse to provide or make an allowance for the transportation of children to school, who reside at an unreasonable distance from school for children to walk? 7. Should the condition of the roads the children must travel and the age of the children receive consideration in determining the question at bar? 8. Should the ability of the district financially to pay transportation be taken into account?

We believe the foregoing questions are vital. We are of the opinion that the power vested in boards of directors of all school corporations, concerning allowing or furnishing transportation for children to school at the expense of the district, except in those districts organized under the provisions of Section 2794-a, Supplement to the Code, 1913 (also School Laws of Iowa, edition of 1911), is set forth in Section 2774 of the Code (also School Laws of Iowa). Section 2774 provides as follows: "And when there will be a saving of expense, and children will also thereby secure increased advantages, it may arrange with any person outside the board for the transportation of any child to and from school in the same or in another corporation, and such expense shall be paid from the contingent fund."

The provision made by law for transportation of pupils in paragraph (c),

Section 2794-a, Supplement to the Code, 1913, applies only to consolidated independent districts where conditions are entirely different from those found in any other form of school district. The consolidated independent district plan contemplates a unit consisting of a larger territorial area where it is feasible to employ regular drivers and where the use of the special wagons for transporting children can be provided without too great expense per capita for children transported to school. Section 2774 remains in the Code unchanged as amended by the Twenty-first General Assembly, neither has a subsequent session of the General Assembly passed any law in any way modifying the provisions of this section as applicable to certain forms of school corporations.

We think the county superintendent is correct in his opinion, "That it is not the intention of the statute to place all the responsibility and all the inconvenience upon the board, and to take all of the responsibility and all of the inconvenience from the patrons of the children living an unreasonable distance from school."

There are school corporations in the state, not organized as consolidated independent districts, where if each family living an unreasonable distance from school could demand that the school board furnish transportation by hiring a special driver and conveyance, that the expense would prohibit the maintenance of the number of months of school each year that should be maintained in each school. The use of the words, "may arrange," and also of the words, "outside the board," clearly prescribe that the matter of providing transportation and the method of providing transportation for children to school are discretionary powers of the board. In "arranging" for transportation of children to school, it is purely within the discretion of the board to make an allowance of money to a parent to transport his own child or children to school, or the board may employ some other person to transport them. The amount that shall be paid for such purpose is clearly a discretionary power of the board, also. There is no impropriety under the law in the action of the board of Pilot township making an allowance to Mr. Shea for transporting his children to school. In fact, it is the only arrangement the board could be expected to make.

We are of the opinion that there are conditions concerning distance children are compelled to travel to school, where a refusal on the part of a board to "arrange" for transportation would be a violation of discretionary power vested in school boards.

The question to be determined is whether the board abused its discretionary power under the terms of the law as provivded in Section 2774.

In Section 2803 of the Code (also same section in School Law, edition of 1911), provision is made whereby children may attend school in another school corporation when living over one and one-half miles from their own school, but nearer a school in another corporation. A patron may not demand this privilege, however, as an agreement of both school boards must be obtained, or the consent of the county superintendent of the county in which the child resides and also the consent of the school board of such adjoining school corporation. Again, the compulsory attendance law, as provided in Section 2823-a, Supplement to the Code, 1913, (same section in School Laws), "shall not apply to any child who lives more than two miles from any school by the nearest traveled road except in those districts in which the pupils are transported at public expense." While the law does not specify what distance shall be considered as an unreasonable distance for children to walk to school, the con-

clusion is natural that a distance exceeding one and one-half to two miles should be considered too far for small children especially to travel to school, regularly. There may be some injustice to fix arbitrarily a maximum limit as a reasonable distance to travel to school. Something depends upon the conditions of the highways.

It is impossible to establish schools equally convenient to all homes. However, there is a limit beyond which it should be considered unfair to expect children to walk to school. The customary size of a subdistrict and also of a rural independent district embraces four sections of land arranged to form a square and when a suitable site can be secured and roads are properly laid out on section lines, the school is generally located at the center of the district or the subdistrict. The greatest distance any child would possibly be compelled to travel under the customary conditions would be two miles.

Reference is made to the foregoing citations in the law relating to attendance of children at school and to the usual form and size of rural district and subdistricts and the location of the schoolhouse therein for the purpose of establishing conclusions that would be fair to the children and also to the district concerning a reasonable distance for children to travel to school without expense to the district. We can arrive at no other conclusion than that it must be considered too far to expect small children to walk, who live at a greater distance than two miles from school, even in favorable weather and where roads are reasonably passable and good. Our judgment also leads us to confirm the above conclusion.

However, the inference should not be made that every family having small children to send to school, that lives more than two miles from school, is entitled to transportation at an expense that would be incurred by the district furnishing a regular means of conveyance for this purpose such as the law necessitates in consolidated independent districts organized under Section 2794-a *et seq.* and with the requirements concerning transportation in such districts.

In conclusion, we are of the opinion that the action of the school board of Pilot township was fair, liberal, and in accordance with law in offering Mr. Shea $10.00 per month to transport his children to school. We think it would have been within the law for the board to have granted Mr. Shea the privilege of sending and transporting his children to any *public* school, not including the high school department, provided he chose to pay the tuition charged, himself, if he selected a *public* school outside the school corporation of his residence.

We find no abuse of discretionary power vested in the board and we think the board has endeavored to deal justly with Mr. Shea in offering him the sum of $10.00 per month to transport his children to school. We believe the county superintendent was justified in sustaining the school board and his decision is therefore

AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, June 5, 1915.

THOMAS D. HATTON v. THE INDEPENDENT SCHOOL DISTRICT OF DES MOINES, IOWA.

Appeal from Polk County.

LEGAL RESIDENCE. From decisions of the court we conclude that the legal residence of a minor is the same as that of his parents unless the parents by proper legal process relinquish their rights to the control of said minor.

ACTUAL RESIDENCE. It is not an easy matter to determine the actual residence of a minor different from that of his natural parents or guardian. The intent must be taken into consideration. The power to determine the actual residence of a minor claiming school privileges is vested in the school board.

The plaintiff in this case is a youth about eighteen years of age. His parents have lived at Dakota City, Humboldt county, Iowa, for the past five or six years. Section 2804 of the Code provides that "persons between five and twenty-one years of age shall be of school age."

There are only two years of high school work, including the ninth and tenth grades, conducted in the Dakota City public school. During the school year of 1913-1914, Thomas D. Hatton, plaintiff, attended the Humboldt high school where he completed the eleventh grade. His tuition in the Humboldt high school to the amount of $3.50 per month was paid by his home district, The Independent District of Dakota City. The balance charged, to the amount of fifty cents per month, was paid by Thomas, himself.

About February, 1914, arrangements are claimed to have been made between the Hatton family and Mr. and Mrs. J. C. Hume of Des Moines, whereby the said Mr. and Mrs. Hume agreed that Thomas should come to Des Moines to live with them as a member of their family. The understanding being that Thomas should complete the twelfth grade in the West Des Moines High School and later attend Drake University. It was decided, however, that it would not be best to break into the school year at Humboldt and that his coming to Des Moines should be deferred to some date prior to the opening of school in September, for the year 1914-1915. Thomas came to Des Moines about August 20, 1914, and entered West Des Moines High School.

The question of tuition was raised by the principal of the high school and Thomas was referred to the secretary of the school board, Mr. A. L. Clinite, to make arrangements regarding the matter. Plaintiff was informed by Mr. Clinite that the usual method of collecting tuition from non-resident pupils would be followed.

On September 22, 1914, and also on November 4, 1914, letters concerning plaintiff's enrollment and tuition in West Des Moines High School were sent to the Secretary of the Independent District of Dakota City by the Secretary of the Independent District of Des Moines. No reply to these letters was received. In January notice of amount of tuition claimed due was sent to John Hatton, the father of the plaintiff. To this notice the following reply was received:

Mr. A. L. Clinite, Sec., Des Moines, Iowa.

Dear Sir: I know nothing about the enclosed nor have I anything to do with it. One of the school directors here said you ought to know enough to draw on the Humboldt County Treasurer for it if it was due from the district. If not due from the district present this to J. C. Hume, 2007 Grand Ave., Des Moines.

Yours truly,
(Signed) J. W. HATTON.

Following the receipt of the letter from Mr. Hatton considerable correspondence passed between Mr. Clinite, Secretary, and Mr. J. C. Hume. Mr. Hume was notified that the tuition claimed had not been adjusted, and that the tuition must be paid or attendance of plaintiff discontinued. It appears that Mr. Hume explained in his letters addressed to the school board concerning a relationship and responsibility which he claimed had been established between himself and plaintiff. At a meeting of the board of directors of the Independent School District of Des Moines, held on the fifteenth day of March, 1914, the secretary was instructed by a unanimous vote of the board to "insist that the tuition for Thos. Hatton be paid either by his district or some one else."

On March 17, 1914, Mr. Hume sent his check for seven months' tuition in full, amounting to $50.75, enclosing with same a letter addressed to the Independent District of Des Moines protesting its payment and claiming "that the exaction of this money by you is illegal."

Appeal was taken to the county superintendent. The decision of the county superintendent briefly states that, "It is hereby determined that Thomas D. Hatton is not a bona fide resident of the city of Des Moines, Polk county, Iowa, and that therefore, the decision of the board of directors of the Independent School District of the City of Des Moines in demanding payment of tuition on behalf of said Thomas D. Hatton for tuition in the West Des Moines High School is affirmed."

Section 2773 of the statute provides that "Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years." The question to be determined is, had Thomas D. Hatton acquired an actual residence within the meaning of this section in the Independent District of Des Moines when he entered West Des Moines High School as a pupil in the twelfth grade? Was he a bona fide resident of Des Moines and entitled to free public school privileges in said high school as contended by Mr. Hume?

Several matters are clearly set forth in an opinion by Hon. John F. Riggs, Superintendent of Public Instruction in the case of *R. L. Todd v. The Independent District of Ida Grove*, from which the following extended citation is taken:

"The legal residence or domicile of minors has been clearly defined but not the actual residence. In the case of *Jenkins v. Clark*, 71 Iowa, 552, the Supreme Court holds that the domicile of the child is to be determined by the domicile of the parent, and that even after the death of both parents the domicile of the child remains where the parents last held legal residence even though the child be now living in another state. It is reasonable to conclude that in such a contingency the actual residence and the legal residence of the child might be totally different.

"It has been the uniform ruling of this department that it is only where the actual residence of the child is clearly established that free public school privileges may be obtained. It follows that a child residing in one district, but visiting or temporarily sojourning in another district is not an actual resident of such district within the meaning of the statute. Likewise a child sent to a district other than that of the residence of the parent or guardian for the purpose of attending school is not an actual resident of such district within the meaning of the statute. But where the residence of the child in the district is in no sense temporary, where as in the case under review, it

has extended through a number of years, and parental control over the child has been relinquished, and where it is further shown that the child's residence in the district is determined by other considerations than the securing of school privileges, and there is no intent that the child is to return subsequently to the parental home, we are of the opinion that within the meaning of the statute the child becomes an actual resident and is entitled to the same school privileges as are enjoyed by other children of the district."

From decisions of the courts, we conclude that the legal residence of a minor is the same as that of his parents, unless the parents by proper legal process relinquish their rights to the control of said minor. There appears to have been no action taken by Mr. and Mrs. Hatton to emancipate their son, Thomas. Neither have Mr. and Mrs. Hume adopted Thomas nor have they been appointed as his guardians. Had either of the above steps been taken, it would have been an easy matter to determine the actual residence of Thomas D. Hatton.

Now, what was the purpose of Thomas in coming to Des Moines to live with Mr. and Mrs. Hume? He just came to live with them in order that he might secure the benefit of a better education than his parents could afford to give him. That seems to have been the motive in view. He came to secure the advantages of the high school in West Des Moines for a year or until he would graduate from the high school. Then the expectation was that he would take a college course in one of the institutions located in Des Moines. The arrangements as to the length of time he might remain in Des Moines seem to have been very indefinite. He testified that he had no intention of returning to the home of his parents, but that he might not remain in Des Moines long if he did not like it. He might go to Omaha to live with a relative and attend school there. It was agreed that Mr. and Mrs. Hume might terminate the arrangements at any time they saw fit. If it is possible for a child to acquire an actual residence or a bona fide residence under such circumstances, then it would be very easy for any child to come to Des Moines and live with a relative and avoid the payment of tuition. A district might in this manner be compelled to carry the burden of educating the children of families living in other districts. While the matter of determining the actual residence of a person of school age, each case must be decided upon its own merits, yet a decision in an individual case might be far reaching in establishing a precedent.

It is not an easy matter to establish or determine the actual residence of a minor different from that of his natural parents or guardian. Particularly is this true when the intent to change actual residence occurs just prior to the opening of school and it is known that the change is made for the purpose of obtaining better public school advantages. The power to determine the actual residence of a minor claiming school privileges is vested in the school board. The school board is charged with looking after the interests of the school district and only on positive evidence of actual residence should a district be held responsible for the education of children. It is true that the interests of the state are that public school privileges be made as free and easy for children as possible. This privilege is guaranteed in every district in Iowa. If the home district of a child does not offer an approved four-year high school course, then the home district must pay the tuition of said child in another district maintaining an approved high school for the number of years that the home district fails to conduct an approved high school. (Section 2733-1a, Sup-

plemental Supplement of the Code, 1915.) It would be very easy for parents to send their children to Des Moines to live with relatives for a period long enough to secure the advantages of one to four years of high school, claiming the intent of making it their home. We think there would be no doubt in case the child had been away from home for some time making his own way, in other words, away from home for other purposes as well as those of attending school.

The determining fact in this case in our opinion is that Thomas D. Hatton came to Des Moines for the purpose of attending school. We find no evidence of any other intention. The fact that Mr. Hume is a tax-payer in Des Moines is irrelevant. Were Mr. Hume a non-resident who paid taxes in the Des Moines district, and desired to send his children to the Des Moines public schools, he would be entitled to have the amount of his school taxes deducted from the amount of tuition required to be paid. Section 2804.

We are not satisfied from the evidence submitted in this case that Thomas D. Hatton has established his claim to actual residence in the Independent School District of Des Moines.

The decision of the county superintendent is therefore AFFIRMED.

A. M. DEYOE,
Superintendent of Public Instruction.

Des Moines, Iowa, October 12, 1915.